Conference Agreement, H.R. 3838

August 16, 1986 8:30 PM
Joint Committee on Taxation
JCX-22-86

I. Individual Tax Provisions

A. Basic Rate Structure

1. Tax rate schedules

a. Rates, brackets

Tentative agreement.--Two-rate structure of 15 percent and 28 percent.

b. Rate adjustment

Tentative agreement .--Five-percent rate adjustment based on taxable income, rather than AGI. Technical amendment (in House and Senate offers) providing that in separate returns of married individuals, the rate adjustment is computed with respect to the joint return 15-percent bracket amount.

c. Effective date/1987 stagger relief

Tentative agreement

1987

For 1987, the rates are (for married filing joint returns):

0 - $3,000	11%
3,000 - 28,000	15%
28,000 - 45,000	28%
45,000 - 90,000	35%
Above 90,000	38.5%

For 1987, there is no phaseout of the lower rates or the personal exemption.

1988

For 1988 and future years, the rates are (for married filing joint returns):

0 - $29,750	15%
Above 29,750	28%

The 5-percent rate adjustment begins at $71,900.

2. Standard deduction

a. Increased standard deduction for all individuals.

House and Senate offers.--House recedes.

b. Additional standard deduction amount for elderly or blind individuals.

House and Senate offers.--House recedes, with an increase to $750 for elderly or blind individuals who are single.

c. Floor under itemized deductions.

Tentative agreement.--House recedes (no floor).

3. Personal exemption

Tentative agreement.--House recedes on amount, phaseout, and rules for dependents, with an amendment providing an exemption amount of $1,950 in 1988 and $2,000 in 1989, and with a modification that the phaseout is computed as a rate adjustment of five percent over taxable income ranges. In lieu of the $100 de minimis rule, a dependent may use up to $500 of his standard deduction to offset unearned income.

4. Adjustments for inflation

Tentative agreement.--House recedes to Senate provision on rounding down (and recedes to comparable Senate provision on inflation measurement period).

5. Two-earner deduction

Repealed in both bills

House and Senate offers.--House recedes on effective date.

6. Income averaging

House and Senate offers.--Senate recedes on income averaging for farmers; House recedes on effective date.

B. Earned Income Credit

House and Senate offers.--House recedes, with amendment raising maximum credit from $700 to $800, and changing phaseout range to $9,000/$17,000 starting January 1, 1988.

C. Exclusions from Income

1. Unemployment compensation

Same in both bills.

2. Scholarships and fellowships

Tentative agreement.--Senate recedes.

3. Prizes and awards

a. Scientific, etc., achievement awards

House and Senate offers.--Same in both bills (House recedes on effective date).

b. Employee awards

Tentative agreement.--House recedes.

D. Deductions for Personal Expenditures

1. Itemized deductions for certain State and local taxes

a. Sales tax deduction

Tentative agreement.--Repeal itemized deduction for State and local sales taxes, effective 1/1/87.

b. Capitalization rule

Tentative agreement.--House recedes.

2. Charitable deduction for nonitemizers

House and Senate offers.--House recedes (present law retained).

3. Medical expense deduction

a. Floor

House and Senate offers.--House recedes, with floor set at 7.5 percent of AGI.

b. Expenditures for handicapped

Tentative agreement.--House recedes to clarification in Finance Committee report.

4. Adoption expenses

Tentative agreement.--Senate recedes.

5. Deductibility of mortgage interest and taxes allocable to tax-free allowances for ministers and military personnel

House and Senate offers.--Same in both bills.

6. Moving expenses

Tentative agreement.--Moving expenses are an itemized deduction.

E. Expenses for Business or Investment

1. Meals, travel, and entertainment expenses

a. Meal expenses

House and Senate offers.--House recedes, with modifications for deductibility of business meals (1) conforming the business purpose standard to that for other entertainment expenses (i.e., by deleting the additional requirement that the business discussion must concern a specific transaction), (2) retaining present law regarding substantiation of meal expenses under $25, and (3) applying the same general fraud and negligence penalties to meals that apply to other entertainment expenses.

b. Entertainment expenses other than for meals

House and Senate offers.--House recedes, except for skybox rule.

Tentative agreement on skyboxes.--3-year phasein of nondeductibility.

c. Travel expenses (other than conventions)

(1) Luxury water transportation

House and Senate offers.--Same in both bills (House recedes on effective date).

(2) Educational travel

House and Senate offers.--Same in both bills (House recedes on effective date).

(3) Charitable travel

House and Senate offers.--Senate recedes, with 1/1/87 effective date.

d. Travel expenses for attending conventions

(1) In general

House and Senate offers.--Same in both bills (House recedes on effective date).

(2) Foreign conventions (Bermuda)

Tentative agreement.--Senate recedes.

2. Employee business expenses, investment expenses, and other miscellaneous itemized deductions

a. In general

Tentative agreement.--(1) Senate recedes, with an amendment providing an increased floor of two percent of AGI, with exceptions to the floor for impairment-related work expenses for handicapped employees; estate tax in the case of income in respect of a decedent; certain adjustments where a taxpayer restores amounts held under a claim of right; amortizable bond premium; certain costs of cooperative housing corporations; expenses of short sales in the nature of interest; certain terminated annuity payments; and gambling losses to the extent of gambling winnings. (2) House recedes to Senate provision on application of the floor to pass-through entities, with an amendment that it does not apply to estates, trusts, cooperatives, and REITs. (3) Provide that certain actors would be allowed to report their income and expenses from acting as if they were independent contractors, if the taxpayer has two or more employers in the acting profession during the tax year; the expenses relating to the acting profession exceed 10 percent of gross income; and adjusted gross income (before deducting expenses related to acting) does not exceed $16,000.

b. Home office expenses

House and Senate offers.--Same in both bills (House recedes on effective date).

c. Hobby losses

House and Senate offers.--Same in both bills (House recedes on effective date).

F. Political Contributions Tax Credit

Tentative agreement.--House recedes.

II. Capital Cost Provisions

A. Cost Recovery: Depreciation; ITC; Finance Leases

1. Accelerated depreciation

a. Cost recovery classes

Tentative agreement.--

3-year 200% Class	ADR midpoints of 4 years and less, except excludes automobiles and light trucks, and retains present-law for horses that are in the 3-year class.
5-year 200% Class	ADR midpoints of more than 4 years and less than 10 years, and adding automobiles, light trucks, qualified technological equipment, computer-based central office switching equipment, renewable energy and biomass properties that are small power production facilities, and research and experimentation property.
7-year 200% Class	ADR midpoints of 10 years and more and less than 16 years, adding single-purpose agricultural or horticultural structures and property with no ADR midpoint not classified elsewhere.
10-year 200% Class	ADR midpoints of 16 years and more and less than 20 years.
15-year 150% Class	ADR midpoints of 20 years and more and less than 25 years, including sewage treatment plants, and telephone distribution plant and comparable equipment used for the two-way exchange of voice and data communications.
20-year 150% Class	ADR midpoints of 25 years and more, other than real property with an ADR midpoint of 27.5 years and more, and including sewer pipes.

27.5-year Straight-line	Residential rental property.
31.5-year Straight-line	Nonresidential real property (real property that is not residential rental property and that does not have an ADR midpoint of less than 27.5 years)

b. Classification of special types of property--

Tentative agreement.--

New ADR midpoints are assigned to the following assets:

(1) Semiconductor manufacturing equipment: 5 years

(2) Computer-based central office switching equipment: 9.5 years

(3) Railroad track: 10 years

(4) Single-purpose agricultural and horticultural structures: 15 years

(5) Telephone distribution plant and comparable equipment: 24 years (Note: For this purpose, comparable equipment means equipment used by non-telephone companies for two-way exchange of voice and data communications (equivalent of telephone communications). Comparable equipment does not include cable television equipment used primarily for one-way communication.)

(6) Sewage treatment plants: 24 years

(7) Sewer pipes: 50 years

c. Luxury cars

House and Senate offers.--House recedes to conforming dollar limitations to leave price range of affected cars unchanged.

d. Changes in classification

Tentative agreement.--Senate recedes with amendment to prevent reclassification of certain assets for five years. After five years Treasury must notify Congress of prospective changes.

2. Alternative cost recovery system

a. In general

(a)(i) Lives

Tentative agreement.--Senate recedes to House offer on use of ADR for over-the-road tractor units.

Method--An exception is provided to recover the cost of personal property for the minimum tax only using the 150% declining balance method.

(ii) Bond-financed property

Tentative agreement.--Same as Senate bill, except no special provision for solid waste and hazardous waste facilities.

(iii) Alternative recovery method for regular depreciation

Tentative agreement.--House recedes.

b. Property predominantly of foreign origin

House and Senate offers.--House recedes.

c. Property used in outer space

House and Senate offers.--Same in both bills.

3. Indexing

House and Senate offers.--House recedes.

4. Accounting conventions

a. Half-year convention

House and Senate offers.--Same in both bills.

b. Mid-month convention

House and Senate offers.--House recedes, with modification to apply mid-month convention only to real property and to apply a midquarter convention to taxpayers who place more than 40 percent of property in service during the last quarter of the taxable year.

5. Gain on disposition

House and Senate offers.--House recedes.

6. Lessee-leasehold improvements

House and Senate offers.--House recedes.

7. Repair allowances

House and Senate offers.--Same in both bills.

8. Expensing

House and Senate offers.--House recedes with modification that the expensed amount is limited to income derived from any active trade or business.

9. Vintage accounts

House and Senate offers.--Same in both bills.

10. Public utility property

House and Senate offers.--Same in both bills.

11. Effective dates for depreciation

a. In general

House and Senate offers.--Same in both offers.

b. Anti-churning rules

House and Senate offers.--House recedes.

c. Transition rules

Open.

12. Regular investment tax credit

Tentative agreement.--

a. Allowable credit.--Repeal effective January 1, 1986.

b. Public utility property.--House recedes to Senate technical amendment.

c. Mandatory reduction of ITC carryovers.--House recedes on reduction to 65 percent of tentative credits.

d. Reduction of ITC claimed under transition rules.--House recedes on reduction to 65 percent of tentative credits and Senate recedes to full basis adjustment.

13. Finance leases

House and Senate offers.--House recedes.

B. Limit on General Business Credit

House and Senate offers.--Same in both bills (Senate recedes on effective date).

C. Research and Development

1. Tax credit for increasing research expenditures

Tentative agreement.--Senate recedes (with definitional changes to be reflected in statutory language, and with university credit to be effective for taxable years beginning after 1986.)

2. Augmented charitable deduction for donations of scientific equipment

Tentative agreement.--Senate recedes.

3. Tax credit for orphan drug clinical testing

Tentative agreement.--Senate recedes, with a three-year extension.

D. Rapid Amortization Provisions

1. Five-year amortization of trademarks and trade name expenditures.

House and Senate offers.--Same in both bills. House recedes on effective date and binding contract date.

2. Five-year amortization of pollution control facilities

Tentative agreement.--House recedes.

3. Fifty-year amortization of qualified railroad grading and tunnel bores

Tentative agreement.--Senate recedes (retain Senate language on particular railroad disaster).

4. Deduction for loss in value of bus operating authorities

Tentative agreement.--House recedes with amendment to include freight forwarders, contingent on deregulation.

5. Expensing for costs of removing architectural barriers to the handicapped and elderly

House and Senate offers.--House recedes.

E. Real Estate Provisions

1. Tax credit for rehabilitation expenditures

House and Senate offers.--Same in both bills, House recedes on effective date.

2. Five-year amortization of expenditures to rehabilitate low-income housing

Tentative Agreement.--House recedes.

3. Tax credit for low-income rental housing

Tentative agreement.--The House modifies the low-income housing credit as follows:

Credit Amount

Three separate credits are provided --

(1) New Construction and Rehabilitation of Existing Housing -- A maximum credit of 9% each year for 10 years on expenditures for new construction and rehabilitation of each qualifying low-income housing unit. (This credit has a present value of 80 percent.)

(2) New Construction and Rehabilitation Financed by Certain Other Federal Subsidies -- A maximum credit of 4% each year for 10 years on expenditures for new construction and rehabilitation financed with tax-exempt bonds or similar Federal subsidies, defined below (e.g., FmHA section 515 loans). As in (1), the credit applies to expenditures on the low-income units only. (This credit has a present value of 30 percent.)

(3) Acquisition Cost of Existing Housing -- A maximum credit of 4% each year for 10 years on the cost of acquisition of each low-income housing unit.

Such property may not have been previously placed in service within 10 years. The Secretary of the Treasury may waive the 10-year requirement for all federally assisted low-income housing projects under the conditions provided by the Senate amendment. Clarification is provided that for purposes of the 10-year requirement, a "step into the shoes" transfer of property does not extend the required holding period beyond the date of the previous owner. (Similar to Mitchell amendment) (This credit has a present value of 30 percent.)

For the credit in (1) or (2), expenditures must exceed $2,000 per low-income unit to qualify for the credit. No transfer of property is required. For the credit in (3), there is no rehabilitation requirement. Rehabilitation expenditures on a project receiving the credit in (3) may, however, qualify for the credit in (1) or (2),

above. States have the authority to allocate less than the maximum allowable credit percentages.

State Volume Limitation

Each State is permitted to issue low-income rental housing tax credits in an amount equal to $1.25 per resident of the State. Only qualifying expenditures which are not financed with the proceeds of tax-exempt bonds must receive credit authority from the State. (This produces credit authority sufficient to cover approximately $14 per capita of new construction or rehabilitation expenditures ($31 per capita if assisted through other Federal subsidies) or $42 per capita of acquisition cost.)

In addition, expenditures from tax-exempt bond financing that are eligible for the credit receive the credit without reducing a State's credit authority. Because tax-exempt bonds for multifamily rental housing are limited under State volume limitations, no separate volume limitation is applied to low-income rental housing tax credits for these projects.

At least 10 percent of the credit authority of each State must be reserved for projects that are developed by certain non-profit organizations, one of the exempt purposes of which is the fostering of low-income housing.

Allocations of credit authority within a State are made in a manner similar to the allocations for qualified mortgage bonds.

Passive Loss Limitation

Credits (but not other losses from qualifying projects) are treated as derived from property in which the owner actively participates. For purposes of the passive loss rule, the income phase-out range for credits is increased to $200,000-$250,000.

Targeting Requirement

(1) At least 20 percent of units in project must be occupied by individuals having incomes of 50 percent or less of area median income, adjusted for family size (same as Senate amendment); or

(2) At least 40 percent of units in project must be occupied by individuals having incomes of 60 percent or less of area median income, adjusted for family size.

Income limits may be adjusted for areas with unusually low family income or high housing costs relative to

family income in a manner consistent with determinations of very low income families and area median gross income under section 8 to reflect the 50-percent and 60-percent income levels. A special exception to the general targeting requirement is provided for one very high cost housing area. (Same as Senate amendment, with technical and conforming amendments)

Property Receiving Other Federal Subsidies

Tax-exempt bond financing or a Federal loan with an interest rate below the applicable Federal rate (or a direct or indirect Federal grant in the form of a true loan, at an interest rate below the AFR) for expenditures for new construction or rehabilitation of any units constitutes a Federal subsidy, unless such loan is excluded from creditable basis. A Federal loan guarantee (e.g., FHA insurance) does not constitute such a subsidy.

A Federal loan or tax-exempt financing that is continued or assumed upon purchase of existing housing is disregarded for purposes of the credit on rehabilitation expenditures. Acquisition cost is eligible for the same credit percentage regardless of its source of financing.

Federal grants (including grants indirectly funded by the Federal Government) are not included in basis (same as Senate amendment). Thus, projects receiving these grants are not treated as receiving other Federal subsidies.

Qualifying Units

Rental units must be used on other than a transient basis. Hotels, dormitories, hospitals, nursing homes, lifecare facilities, and retirement homes are not qualifying properties.

Certain other single room occupancy housing used on a nontransient basis may qualify for the credit, even though such housing may provide eating, cooking, and sanitation facilities on a shared basis.

Effective Date for Credit and Passive Loss Exception

Property placed in service after December 31, 1986, and before January 1, 1990. Property placed in service after 1989 would be eligible for the credit and passive loss exception if expenditures of 10 percent or more of total project costs are incurred before January 1, 1989 (i.e., one year before the sunset date), and the property is placed in service before January 1, 1991.

F. Merchant Marine Capital Construction Fund

Tentative agreement.--Senate recedes, with an amendment to extend the limit on the time money can remain in the fund to 25 years. (House recedes on treatment as preference item for purposes of minimum tax).

III. Capital Gains and Losses

A. Individual Capital Gains

Tentative agreement.--House recedes; conform capital gains rate to top individual rate. For 1987, the top capital gains rate is 28%.

B. Corporate Capital Gains

Tentative agreement.--Senate recedes with amendment conforming capital gains rate to top corporate rate (alternative corporate capital gains rate is 34 percent, effective January 1, 1987). Section 1231 retained. For both individual and corporate capital gains, retain the current statutory structure for capital gains in the Code to facilitate reinstatement of a capital gains rate differential if there is a future tax rate increase.

C. Incentive Stock Options

Tentative agreement.--House recedes.

D. Straddles

1. Mark-to-market system

Tentative agreement.--Senate recedes.

2. Year-end rule for qualified covered calls

House and Senate offers.--House recedes.

3. Hedging exception

Tentative agreement.--Senate recedes.

IV. Agriculture, Timber, Energy, and Natural Resourses

A. Agricultural Provisions

1. Special expensing provisions

a. Soil and water expenditures

House and Senate offers.--Same in both bills, House recedes on effective date.

b. Fertilizer and soil conditioning expenditures

Tentative agreement.--House recedes.

c. Land clearing expenditures

House and Senate offers.--Same in both bills.

2. Dispositions of converted wetlands and highly erodible croplands

House and Senate offers.--Same in both bills, House recedes on effective date.

3. Preproductive period expenses of farmers

a. In general

Tentative agreement.--Senate recedes.

b. Expenses relating to grove, orchard, and vineyard crops

Tentative agreement.--Include provisions in both bills.

4. Prepayment expenses of farmers

Tentative agreement.--House recedes, with modification providing that the limitation applies to prepaid expenses to the extent they exceed 50 percent of expenses for which economic performance has occurred.

5. Plant variety protection certificates

Tentative agreement.--House recedes.

6. Recapture income on installment sales of farm irrigation equipment

Tentative agreement.--Senate recedes.

7. Discharge of indebtedness for certain farmers

Tentative agreement.--House recedes.

B. Timber Provisions

1. Preproductive expenses of growing timber

Tentative agreement.--Retain present law.

2. Reforestation expenses

Tentative agreement.--Retain present law, including allowing investment credit for reforestation expenses.

3. Capital gains for timber

Tentative agreement.--Conform capital gains rate to top individual and corporate rates. Permit taxpayers to revoke elections under section 631(a).

C. Oil, Gas, and Geothermal Properties

1. Intangible drilling costs

a. General rule

Tentative agreement.--House recedes with modification providing that 30 percent of integrated producer IDCs are to be amortized (under sec. 291) over a 5-year, straight-line period.

b. Treatment of foreign IDCs

Tentative agreement.--House recedes. Clarify that dry hole expenses remain deductible.

2. Depletion for oil, gas, and geothermal properties

a. General rule

Tentative agreement.--House recedes.

b. Treatment of bonuses and advance royalties

Tentative agreement.--Senate recedes.

3. Gain on disposition of interest in oil, gas, or geothermal property

Tentative agreement.--Senate recedes.

4. Windfall profit tax exemption for certain exchanges of crude oil

Tentative agreement.--House recedes.

D. Hard Minerals

1. Exploration and development costs

a. General rule

Tentative agreement.--House recedes with modification providing that 30 percent of corporate exploration and development costs are to be recovered (under sec. 291) over a 5-year, straight-line period.

b. Foreign exploration costs

House and Senate offers.--Same in both bills, House recedes on effective date.

2. Percentage depletion of hard mineral deposits

Tentative agreement.--House recedes with modification increasing the reduction in excess corporate coal and iron ore percentage depletion (under sec. 291) from 15 to 20 percent.

3. Gain on disposition of interest in mining property costs

Tentative agreement.--Senate recedes.

4. Royalty income from coal and domestic iron ore

Tentative agreement.--House recedes.

E. Energy-Related Tax Credits and Other Incentives

1. Residential renewable energy tax credit

House and Senate offers.--House recedes.

2. Business energy tax credits

a. Credit allowed

(1) Business solar energy credit

House and Senate offers.--10% credit in 1988 (other years same in both bills).

(2) Business geothermal energy credit

Tentative agreement.--Same in both bills. Clarify that Treasury regulations will determine the treatment of cogeneration facilities.

(3) Business ocean thermal energy credit

Tentative agreement.--House recedes (i.e., extend credit at 15% rate for 1986-1988).

(4) Business wind and biomass energy credits

Tentative agreement.--House recedes on biomass credit; Senate recedes on wind credit.

(5) Intercity bus and small-scale hydroelectric credits

House and Senate offers.--Same in both bills.

b. Extension of energy tax credit for chlor-alkali electrolytic cells

Tentative agreement.--Senate recedes (i.e., credit available through 1982 as under present law).

c. Affirmative commitment rules

Tentative agreement.--Treat in same manner as general investment tax credit for transition property.

3. Nonconventional fuels production credit

Tentative agreement.--House recedes (i.e., retain present law).

4. Alcohol fuels credit, exemptions; import duty

a. Alcohol fuels income tax credit and excise tax exemption

House and Senate offers.--House recedes.

b. Duty on imported alcohol fuels

Tentative agreement.--House recedes with amendment incorporating language of section 864, H.R. 4800, subject to a modification of the transition provision. This provision is effective for articles entered after December 31, 1986.

5. Neat alcohol fuels

House and Senate offers.--Same in both bills, House recedes on effective date.

6. Taxicab fuels tax exemption

Tentative agreement.--Senate recedes.

V. Tax Shelters; Interest Expense

A. At-Risk Rules

Tentative agreement.--The House recedes on the third party lender exception, with amendments providing that the terms of the loan be commercially reasonable and substantially similar to loans made to unrelated parties. The Senate recedes on the footnote in the Senate committee report on Sec. 704 and Sec. 752 and the Senate floor colloquy regarding those sections.

B. Limitations on Losses and Credits from Passive Activities

Tentative agreement.--House recedes. For the rehabilitation and low income housing credits, the phase-out range for offsetting tax on up to $25,000 of non-passive income is increased to between $200,000 and $250,000 of adjusted gross income (disregarding passive losses), regardless of the taxpayer's participation. The exceptions under the passive loss rule for the low income housing credit apply only (for the original credit compliance period) to property placed in service before 1990, except if the property is placed in service before 1992 and 10 percent or more of the total project costs are incurred before 1990. Any passive loss which is disallowed for a taxable year during the transitional period and carried forward may be allowed in a subsequent year only to the extent there is net passive income in the subsequent year (or the activity is disposed of).

C. Nonbusiness Interest Limits

1. General limitation

Tentative agreement.--House recedes, with amendment providing mortgage interest on a principal or second home attributable to loans to the extent in excess of the amount of the purchase price plus the cost of any improvements would not be deductible unless incurred for educational or medical expenses. House agrees to clarification that interest on tax underpayments (other than deferred estate taxes) is treated as consumer interest under Senate bill.

2. Definition of interest subject to limitation

House and Senate offers.--House recedes; interest (and income) from activities subject to the passive loss rules are not treated as investment interest (or investment income), except that passive losses from activities subject to the investment interest limitation in the Senate bill that are allowed under the passive loss phase-in provision are subtracted from investment income.

3. Investment income defined

Tentative agreement.--House recedes.

4. Net leases

House and Senate offers.--Same in both bills.

5. Effective date

House and Senate offers.--House recedes. Any interest which is disallowed for a taxable year during the transitional period and carried forward may be allowed in a subsequent year only to the extent there is investment income in excess of investment interest paid or incurred in such subsequent year.

VI. Corporate Taxation

A. Corporate Tax Rates

Tentative agreement.--Top corporate rate of 34 percent.

B. Corporate Dividends Paid Deduction

Tentative agreement.--House recedes.

C. Corporate Dividends Received Deduction

House and Senate offers.--Same in both bills on reduction from 85 to 80 percent, House recedes on effective date.

Tentative agreement.--House also recedes on item (b) (in connection with tentative compromise on dividends paid deduction).

D. Extraordinary Dividends Received by Corporate Shareholders

Tentative agreement.--House recedes with modifications providing 2-year holding period before the date of announcement or agreement about dividend and with technical amendments for certain joint venture agreements and certain preferred stock; certain redemptions included.

E. Corporate Shareholder Redemptions

Tentative agreement.--Senate recedes.

F. Dividend Exclusion for Individuals

House and Senate offers.--Same in both bills, House recedes on effective date.

G. Stock Redemption Payments

House and Senate offers.--House recedes.

H. Limitations on Net Operating Loss (NOL) Carryovers

1. General rules

House and Senate offers.--Same in both bills, with technical amendments.

2. Certain transfers of stock that are disregarded in determining whether the special limitations apply

House and Senate offers.--House recedes with amendment disregarding stock acquired by an ESOP only if the ESOP holds at least 50 percent of the stock immediately after the transfer and certain other requirements are met, with

technical modifications.

3. Rate of return limitation

House and Senate offers.--Senate recedes with amendments requiring Treasury to publish tax-exempt Federal long-term rate within 30 days of date of enactment, and requiring use of highest rate in effect for any month in the 3-month period ending with the month in which the ownership change occurs.

4. Business continuation requirements

House and Senate offers.--Senate recedes.

5. Built-in gains and losses

House and Senate offers.--House recedes with amendment directing Treasury to study built-in deductions and report to the tax writing committees by January 1, 1989.

6. Bankruptcy proceedings and stock-for-debt exchanges

a. Bankruptcy proceedings generally

Tentative agreement.--House recedes with amendments extending holding period for creditor claims to 18 months and reducing carryovers by 50 percent of the excess of the discharged debt over the value of the stock transferred to the creditors. Provide transition rule if a petition was filed in a bankruptcy court before August 14, 1986. Treasury is directed to study workouts and report to the tax-writing committees by January 1, 1988.

b. Financially troubled thrifts.--See Reorganization of financially troubled thrifts (IX.D.2.)

7. Investment assets

House and Senate offers.--Senate recedes with technical modifications and exceptions for RICs and REITs.

8. Capital contributions

House and Senate offers.--House recedes.

9. Effective date and status of amendments made by Tax Reform Act of 1976

Tentative agreement.--House recedes, including transition rule for bankruptcy petitions (described above).

I. Net Operating Loss (NOL) Carrybacks--Tax Rate Limitation

Tentative agreement.--Senate recedes.

J. Gain or Loss on Liquidating Sales and Distributions (General Utilities)

Tentative agreement.--Senate recedes with modifications as follows:

1. Transactions grandfathered under original House bill remain grandfathered; provided, however, that the sales or distributions must be completed before January 1, 1988 (rather than in certain cases commencing before that date).

2. The following additional transactions are grandfathered:

   a. liquidations completed before January 1, 1987;

   b. liquidations pursuant to a plan of liquidation adopted before August 1, 1986 and which are completed on or before December 31, 1987;

   c. deemed liquidations under section 338 with respect to purchases of stock constituting control (for sec. 338 purposes) before January 1, 1987; and

   d. deemed liquidations under section 338, or actual liquidations, of companies that are acquired pursuant to a binding contract entered into before August 1, 1986, provided the 338 deemed liquidation date, or the completion of the actual liquidation, occurs on or before December 31, 1987.

3. Complete relief (except for ordinary income and short-term gain property) is provided for small, closely held companies on liquidating sales or distributions occurring before January 1, 1989, where liquidation is completed by that date. This replaces all House bill relief for 10 percent shareholders. Such small, closely held companies are those not exceeding $5 million in value and more than 50 percent of whose stock is owned directly or indirectly for a substantial period by no more than 10 individuals. Relief phases out for such closely held companies with value between $5 and $10 million.

4. The Treasury Department is to study reform of subchapter C and report to the tax-writing committees by January 1, 1988.

K. Allocation of Purchase Price in Certain Sales of Assets

House and Senate offers.--House recedes.

L. Related Party Sales

Tentative agreement.--House recedes with modifications further conforming related party definition to section 267 and requiring ratable basis recovery and conformity between buyer and seller in certain cases. Effective date: sales after date of enactment, unless made pursuant to a binding contract in effect before August 14, 1986.

M. Amortizable Bond Premium

Tentative agreement.--House recedes.

N. Cooperative Housing Corporations

House and Senate offers.--Adopt provisions in both bills.

O. Real Estate Investment Trusts

Tentative agreement.--House recedes with provisions relating to (i) qualification of income from certain shared appreciation mortgages; (ii) technical modification to distribution requirement relief provision; (iii) application of the same taxable year and spillover dividends provisions applicable to RICs; (iv) technical modification to the alternative prohibited transaction safe harbor; (v) providing first year relief to income from the investment of the proceeds of publicly offered debt securities equivalent to that provided for the income from new equity capital; and (vi) clarification regarding the services that may be provided by a REIT without use of an independent contractor (which clarification would be made consistent with the unrelated business income rules). Effective dates are the same as the Senate bill, generally effective for taxable years beginning after December 31, 1986.

P. Mortgage-Backed Securities

House and Senate offers.--Same as Senate bill with modifications relating to (a) application of entity level tax, (b) treatment of residual income, (c) application of a "wash sale" rule to the sale of residual interests, (d) making certain modifications to the owners' debt pool provisions including delaying effective date for five years, (e) permitting shelf registration, (f) treatment of issuance expenses, (g) modification of distribution requirement, (h) provision of cure procedures, (i) modification of the definition of residual interest, and (j) application of sec. 582.

Q. Regulated Investment Companies

Tentative agreement.--House recedes with provisions (i)

modifying the calendar year and spillover dividend provisions, allowing deferral of a de minimis amount of ordinary income and a portion of capital gains derived during the calendar year; (ii) providing that differences in the rate of dividends paid to accounts of over $10 million, which differences reflect savings in administrative costs (but not differences in management fees), would not be treated as "preference dividends"; (iii) providing a hedging exception to the "short-short" test; and (iv) allowing "business development companies" to be eligible to elect RIC status. Effective for taxable years beginning after December 31, 1986.

R. Definition of Personal Holding Company Income

Tentative agreement.--For computer software royalties, the House recedes on the effective date and the exception from the definition of foreign personal holding company income; the Senate recedes on the fifty percent test. The House recedes to the Senate provision for broker dealers in securities. The Senate recedes on biomedical research royalties.

S. Certain Entity Not Taxed as a Corporation

Tentative agreement.--House recedes.

VII. Minimum Tax Provisions

A. Individual Minimum Tax

1. Structure

House and Senate offers.--Same in both bills.

2. Rate

House and Senate offers.--House recedes, with amendment changing rate to 21 percent.

3. Exemption amount

House and Senate offers.--House recedes.

4. Tax preferences

a. Dividends excluded from gross income

House and Senate offers.--Same in both bills.

b. Accelerated depreciation on real property

House and Senate offers.--Same in both bills.

c. Accelerated depreciation on personal property

Tentative agreement.--House recedes to Senate offer which changes depreciation method to 150% declining balance (switching to straightline in the year necessary to maximize the allowance).

d. Expensing of intangible drilling costs

Tentative agreement.--Senate recedes.

e. 60-month amortization on certified pollution control facilities

Tentative agreement.--House recedes.

f. Expensing of mining exploration and development costs

House and Senate offers.--Same in both bills.

g. Expensing of circulation expenditures (for newspapers, magazines, etc.)

House and Senate offers.--Same in both bills.

h. Expensing of research and experimentation expenditures

House and Senate offers.--Same in both bills.

i. Percentage depletion

House and Senate offers.--Same in both bills.

j. Net capital gain deduction

House and Senate offers.--House recedes.

k. Incentive stock options

House and Senate offers.--Same in both bills. Senate recedes to technical change in House offer.

l. Tax-exempt interest

Tentative agreement.--Senate recedes, with amendments exempting bonds issued on behalf of section 501(c)(3) organizations and applying provision only to bonds issued on or after 8/8/86 (except for bonds covered under the Joint Statement on Effective Dates of March 14, 1986, bonds issued after the earlier of date of enactment or September 1, 1986), and with technical clarification for current refundings of bonds issued as part of a series.

m. Excludable income earned abroad by U.S. citizens

House and Senate offers.--House recedes.

n. Completed contracts and other methods of accounting for long-term contracts

Tentative agreement.--Same in both bills, conforming effective date to completed contracts treatment in regular tax.

o. Installment method of accounting

Tentative agreement.--House recedes, except preference applies to the same transactions subject to proportionate disallowance of the installment method.

p. Net loss from passive business activities

Tentative agreement.--House recedes.

q. Net loss from passive farming activities

Tentative agreement.--House recedes.

r. Charitable contributions of appreciated property

Tentative agreement.--Senate recedes on treating itemized deduction for charitable contributions of appreciated property as preference, with amendment deleting the House bill's limitation of the preference to the amount of the taxpayer's other preferences.

5. Itemized deductions

Tentative agreement.--House recedes to conform to regular tax definition of investment interest, and with amendment providing investment interest carryover.

6. Regular tax elections

House and Senate offers.--Same in both bills.

7. Adjustments in other years when taxpayer pays minimum tax

House and Senate offers.--Same in both bills.

8. Incentive credits

House and Senate offers.--Same in both bills.

9. Foreign tax credit

Tentative agreement.--House recedes.

10. Net operating losses (NOLs)

Tentative agreement.--NOLs cannot offset more than 90% of minimum taxable income.

B. Corporate Minimum Tax

1. Structure

House and Senate offers.--Same in both bills.

2. Rate

House and Senate offers.--House recedes.

3. Exemption amount

House and Senate offers.--House recedes.

4. Tax preferences

a. Accelerated depreciation on real property

House and Senate offers.- House recedes.

b. Capital gain preference

House and Senate offers.--Same in both bills.

c. 60-month amortization of certified pollution control facilities

Tentative agreement.--House recedes.

d. Bad debt reserve deduction for financial institutions

House and Senate offers.--Same in both bills.

e. Percentage depletion

House and Senate offers.--Same in both bills.

f. Accelerated depreciation on personal property

Tentative agreement.--House recedes to Senate offer which changes depreciation method to 150% declining balance (switching to straightline in the year necessary to maximize the allowance).

g. Expensing of mining exploration and development costs

Tentative agreement.--Senate recedes.

h. Expensing of intangible drilling costs

Tentative agreement.--Senate recedes.

i. Expensing of circulation expenditures (by newspapers, magazines, etc.)

House and Senate offers.--Same in both bills.

j. Expensing of research and experimentation expenditures

House and Senate offers.--Same in both bills.

k. Tax-exempt interest

Tentative agreement.--Senate recedes, with amendments exempting bonds issued on behalf of section 501(c)(3) organizations and applying provision only to bonds issued on or after 8/8/86 (except for bonds covered under the joint statement on effective dates of March 14, 1986, bonds issued after the earlier of date of enactment or September 1, 1986), and with technical clarification for current refundings of bonds issued as part of a series.

l. Excludable foreign sales corporation (FSC)

income

Tentative agreement.--House recedes.

m. Completed contracts and other methods of accounting for long-term contracts

Tentative agreement.--Same in both bills, conforming effective date to completed contracts treatment in regular tax.

n. Charitable contributions of appreciated property

Tentative agreement.--Senate recedes on treating itemized deduction for charitable contributions of appreciated property as preference, with amendment deleting the House bill's limitation of the preference to the amount of the taxpayer's other preferences.

o. Installment method of accounting

Tentative agreement.--House recedes, except preference applies to the same transactions subject to proportionate disallowance of the installment method.

Senate offer.--House recedes.

p. Capital construction funds for shipping companies

Tentative agreement.--House recedes to Senate bill.

q. Business untaxed reported profits

Tentative agreement.--In 1987, 1988, and 1989, book income, as in the Senate bill. After 1989, the use of book income in the Senate bill is replaced by the use of earnings and profits in a revenue-neutral manner. The definition of earnings and profits is modified with respect to pre-effective date transactions, more closely to achieve the goals of the Senate's use of book income, and to conform the rules for computing earnings and profits more closely to the policy objectives of the Internal Revenue Code. Treasury study is mandated.

5. Regular tax elections

House and Senate offers.--Same in both bills.

6. Adjustment in other years when taxpayer pays minimum tax

House and Senate offers.--House recedes.

7. Incentive credits

Tentative agreement.--House recedes, with amendment allowing investment tax credits to offset 25% of tentative minimum tax liability, with technical clarification providing that income eligible for the sec. 936 credit is not included in minimum taxable income of the sec. 936 corporation.

8. Foreign tax credit

Tentative agreement.--House recedes.

9. Net operating losses (NOLs)

Tentative agreement--NOLs cannot offset more than 90% of minimum taxable income.

10. Estimated tax payments

House and Senate offers.--Same in both bills.

11. Effective date

House and Senate offers.--House recedes.

VIII. Accounting Provisions

A. Limitations on the Use of the Cash Method of Accounting

House offer.--Senate recedes with an amendment allowing qualified personal service corporations to meet their ownership test if employee owned. The period over which the income attributable to the change in the method of accounting is included in income is reduced from 5 to 4 years. Effective for taxable years beginning after December 31, 1986.

Senate offer.--House recedes.

Tentative agreement.--Senate recedes to House offer with amendment treating as qualifying ownership of stock the indirect ownership by employees through a holding company with subsidiaries in the same field of service. Tax shelters are prohibited from using the cash method of accounting.

B. Simplified Dollar Value LIFO Method for Certain Small Businesses

Tentative agreement.--Senate recedes. Effective for taxable years beginning after December 31, 1986.

C. Installment Sales

Tentative agreement.--House recedes, with amendments providing that (i) the interest rate in the special rule for timeshares and residential lots is 100 percent of the AFR applicable to the maturity of the note; and (ii) the spread period for taxpayers who may no longer use the installment method for sales under a revolving credit plan is reduced to four years.

D. Capitalization Rules for Inventory, Construction, and Development Costs

1. Inventory

House offer.--Senate recedes.

Senate offer.--Senate recedes on accelerated depreciation on all assets; House recedes on applying the uniform rules to retailers and wholesalers with gross receipts in excess of $5 million. The Statement of Managers will clarify that the pad inside formation used for gas storage is not inventory.

Tentative agreement.--House recedes to Senate offer, with an exception for retailers and wholesalers with annual gross receipts of $10 million or less. The Statement of

Managers will provide that cushion gas (and emergency reserve gas to the extent provided by regulations) is not inventory for purposes of the capitalization rules. Treasury will be directed to provide simplified methods of applying rules to retailers and wholesalers in appropriate circumstances, with examples to provided in the Statement of Managers. The period over which the income attributable to the accounting method change is included in income is reduced from 5 to 4 years.

2. Self-constructed property and noninventory property produced for sale

House and Senate offers.--Same in both bills.

3. Interest

Tentative agreement.--House recedes on treatment of real property construction period interest; Senate recedes on treatment of long-lived property.

E. Long-Term Contracts

Tentative agreement.--Require taxpayers using the completed contract method of accounting to capitalize an additional amount of costs equal to the fully reimbursed portion of independent research and development costs and unsuccessful bid and proposal costs attributable to Federal government contracts that require certification of such costs. Also, provide a partial cut-back of the benefits of the completed contract method sufficient to yield aggregate revenues of $3.5 billion over the Senate bill.

F. Reserves for Bad Debts

Tentative agreement.--Senate recedes, except House recedes on treatment of reserves for dealers' guarantees. The net balance in any reserve for bad debts is taken into income ratably over 4 years. Wholly worthless debts need not be charged off on a taxpayer's books in order to be deductible. Effective for taxable years beginning after December 31, 1986.

G. Taxable Years of Partnerships, S Corporations, and Personal Service Corporations

Tentative agreement.--House recedes with an amendment requiring that personal service corporations not deduct payments to owner-employees prior to the year paid. Effective for taxable years beginning after December 31, 1986.

H. Special Treatment of Certain Items

1. Qualified discount coupons

House and Senate offers.--House recedes. Effective for taxable years beginning after December 31, 1986. The income attributable to the accounting method change is taken into account over a period not longer than 4 years.

2. Utilities using accrual accounting

House and Senate offers.--House recedes. Effective for taxable years beginning after December 31, 1986.

3. Contributions in aid of construction

House and Senate offers.--Senate recedes. Effective for contributions received after December 31, 1986.

4. Discharge of indebtedness of solvent taxpayers

House and Senate offers.--House recedes. Effective for discharges after December 31, 1986.

IX. Financial Institutions

A. Reserves for Bad Debts

1. Commercial banks

House offer.--Deny reserve method for large banks with gross assets in excess of $500 million; recapture balance of existing reserves generally on a pro rata basis over 5 year period (i.e., 20% per year in 1987 through 1991).

Senate offer.--Accept House offer, except that there would not be any recapture of existing reserves for any year that the bank was troubled. A bank is troubled if the amount of its non-performing assets exceeds 75 percent of its capital. Recapture balance of existing reserves on the following schedule -- 10% in 1987, 10% in 1988, 20% in 1989, and 60% in 1990.

Tentative agreement.--Accept Senate offer, except that recapture balance of existing reserves on the following schedule -- 10% in 1987, 20% in 1988, 30% in 1989, and 40% in 1990. Effective for taxable years beginning after December 31, 1986.

2. Thrift institutions

House and Senate offers.--Continue use of reserve method, but reduce percentage of taxable income method from 40% to 8%. Effective for taxable years beginning after December 31, 1986.

B. Interest on Debt to Purchase or Carry Tax-Exempt Obligations

House offer.--Senate recedes except that the $10 million per issuer exception is limited to governments that reasonably expect to issue not more than $10 million of governmental or section 501(c)(3) obligations during the calendar year and the rule that the acquiring bank must be located in state of issuer is deleted. Effective for interest incurred in taxable years ending after December 31, 1986, with respect to bonds acquired after December 31, 1985, except for bonds acquired pursuant to binding contracts before September 25, 1985.

Senate offer.--Accept House offer, except make $10 million exception available on a permanent basis to small issuers, without regard to $3 million per project limitation. Effective for interest incurred in taxable years ending after December 31, 1986, with respect to bonds acquired after August 7, 1986.

Tentative agreement.--Accept House offer, except $10 million exception applied without $3 million per project

limitation and accept Senate offer effective date. The $10 million exception is made permanent.

C. Net Operating Losses of Financial Institutions

House offer.--Senate recedes, except provide an additional 3-year carryforward for losses of thrift institutions incurred after 1981 and before 1986.

Senate offer.--House recedes.

Tentative agreement.--Retain special 10-year carryback for commercial banks for portion of NOLs attributable to bad debts for losses incurred in taxable years beginning before 1994; otherwise repeal special 10-year carryback effective for losses incurred in taxable years beginning after December 31, 1986; provide additional 3 year carryforward for losses of thrift institutions incurred after 1981 and before 1986.

D. Reorganizations of Financially Troubled Thrift Institutions

House offer.--Provide sunset of special rules permitting qualification for tax-free status, carryover of net operating losses, and exception from income of FSLIC payments for reorganizations after December 31, 1986.

Senate offer.--Accept House offer but delay effective date until reorganizations after December 31, 1988.

Tentative agreement.--Accept Senate offer.

E. Losses on Deposits in Insolvent Financial Institutions

House and Senate offers.--Same in both bills.

Tentative agreement.--Statement of Managers would reaffirm IRS announcement on noninclusion of interest credited by those institutions.

X. Insurance Products and Companies

A. Insurance Products

1. Exclusion for interest on installment payments of life insurance proceeds

Tentative agreement.--House recedes, effective for deaths occurring after date of enactment.

2. Structured settlements

Tentative agreement.--Senate recedes.

3. Policyholder loans

Tentative agreement.--Senate recedes to House committee report language regarding single premium policies, with Statement of Managers restating a Senate floor colloquy that universal life insurance is not always treated as a single premium policy. House recedes on limitation of interest deduction on policyholder loans of businesses.

4. Treatment of policies to cover prearranged funeral expenses

Tentative agreement.--House recedes, with amendment providing cap on death benefit of $25,000.

5. Deduction for policyholder losses

Tentative agreement.--Senate recedes.

B. Life Insurance Companies

1. Special life insurance company deduction

Tentative agreement.--Same in both bills.

2. Tax-exempt organizations engaged in insurance activities

Tentative agreement.--Senate recedes with amendments providing that, with respect to existing tax-exempt Blue Cross and Blue Shield organizations, they are (1) taxable as stock property and casualty insurance companies; (2) allowed a deduction (not to exceed taxable income) equal to one quarter of the year's annual claims and administrative expenses less prior year's surplus for regular tax; (3) given a fresh start with respect to accounting methods, including loss reserves; and (4) exempt from the provision regarding unearned premiums of property and casualty insurance companies. The basis of assets of existing organizations is stepped up to fair market value immediately prior to the effective date for purposes of determining gain. New organizations, to be

eligible for this treatment, are required to meet certain requirements: (1) at least 10 percent of accident and health insurance is provided to individuals and small groups (disregarding Medicare supplemental coverage), defining a small group as the lesser of 15 individuals or the number of individuals required for a small group under State law, (2) full-year open enrollment (including conversions) for individuals and small groups, (3) policies covering individuals provide full coverage of pre-existing conditions of high-risk individuals without a price differential (with a reasonable waiting period), and coverage is provided without regard to age, income, or employment status of persons under age 65, and (4) at least 35 percent of enrollment is community rated. Exceptions from the general provision are provided for TIAA/CREF (pension business only), for certain church-sponsored insurance, for YMCA (retirement fund), for administrative services performed by municipal leagues, and for the Missouri Hospital Association. Senate recedes on the study of fraternal beneficiary societies.

3. Treatment of electing mutual life insurance company

Tentative agreement.--Senate recedes.

4. Physicians' and surgeons' mutual protection association

Tentative agreement.--House recedes.

5. Operations loss deduction of insolvent companies

House and Senate offers.--Same in both bills.

C. Property and Casualty Insurance Companies

1. Treatment of acquisition expenses

Tentative agreement.--House recedes with an amendment to reduce the phase-in period for the treatment of existing unearned premium reserves to 6 years, and an amendment to exempt title insurers and instead to apply discounting to title insurance State law unearned premium reserves. For title insurers, the discounting period is the period over which the unearned premium reserves are deferred under State law, and the discount rate is the rate generally applicable to property and casualty insurers. Title insurance case reserves are subject to discounting under the same method as property and casualty insurance loss reserves.

2. Treatment of tax-exempt income

Tentative agreement.--Senate recedes to House offer to

apply 15-percent rate for taxable years beginning after December 31, 1986, with amendment exempting stock and bonds acquired on or before August 7, 1986.

3. Treatment of loss reserves

Tentative agreement.--House recedes with an amendment to provide that the discount rate is 100 percent of midterm AFR; no fresh start is provided for reserve strengthening in taxable years beginning after 1985. Loss adjustment expenses of life insurance companies are not subject to discounting because they are not deductible.

4. Treatment of net gain from operations

Tentative agreement.--House recedes.

5. Limiting policyholder dividend deduction for mutual companies

Tentative agreement.--Senate recedes, with amendment providing that study covers the minimum tax as well as the regular tax, incorporates examination of revenue targets, and is due January 1, 1988.

6. Protection against loss account for mutual companies

Tentative agreement.--House recedes, with amendment providing for recapture of existing accounts in accordance with present law.

7. Special exemptions, rates, and deductions of small mutual companies

Tentative agreement.--House recedes, with an amendment providing that the ownership test for a controlled group is 50 percent rather than 80 percent for purposes of determining eligibility for the small company provision.

XI. Pensions and Deferred Compensation; Employee Benefits; ESOPS

A. Tax-Favored Savings

1. Individual retirement arrangements

a. Eligibility to make deductible IRA contributions

Tentative agreement.--Senate recedes, with modifications and with an amendment to retain present law for returns of taxpayers without retirement plans and to allow a $2,000 IRA deduction, phased out between $40,000 and $50,000 of AGI ($25,000 and $35,000 for singles) for returns of taxpayers for which either the individual or spouse has a retirement plan. Individuals are permitted to make nondeductible IRA contributions to a separate account to the extent they are ineligible to make deductible contributions. Phase-out based on AGI applies to AGI before reduction for deductible IRA contributions.

b. Spousal IRA

Tentative agreement.--Same in both bills; Senate recedes on effective date.

c. Additional income tax on early withdrawals

Tentative agreement.--House recedes with an amendment to apply a uniform 10-percent rate.

d. Interest on loans to make IRA contribution

Tentative agreement.--Senate recedes.

e. Acquisition of gold and silver coins by IRAs

Tentative agreement.--House recedes.

2. Qualified cash or deferred arrangements

a. Limit on elective deferrals

Tentative agreement.--House recedes with amendments to (1) delete additional $2,500 limit for contributions to an ESOP, (2) allocate income on excess contributions on a pro-rata basis, (3) provide that a cashed out excess contribution is not subject to the additional income tax on early withdrawals, (4) apply the same method of indexing as applies for purposes of the defined contribution plan dollar limitation under section 415; (5) clarify that the $7,000 limit applies on a pro-rata basis to partnership fiscal years ending in 1987, and (6) permit cash outs of excess contributions without regard to plan provisions until the required plan amendment

date.

b. Nondiscrimination requirements

Tentative agreement.--Senate recedes with amendments to (1) adopt staff compromise on definition of highly compensated employees, (2) allocate income to excess deferrals on a pro-rata basis, (3) provide that cashed out excess contributions are not subject to the additional income tax on early withdrawals, (4) permit cash outs of excess deferrals without regard to plan provisions until the required plan amendment date, (5) adopt uniform definition of compensation, (6) apply the provisions effective for years beginning after December 31, 1988, with respect to grandfathered plans of State and local government employers. House recedes on special exception for definition of highly compensated employees for a certain company, and Senate recedes on regulation authority relating to multiple use of alternative nondiscrimination test.

c. Withdrawal and other restrictions

(1) Hardship withdrawals

Tentative agreement.--Same in both bills.

(2) Withdrawals on account of plan termination, etc.

Tentative agreement.--House recedes with amendments clarifying that (i) the rules apply only to total distributions and (ii) the sale of assets rule applies to a sale of substantially all the assets used in a trade or business of the employer, effective after December 31, 1984.

(3) Conditioning other benefits on elective deferrals

Tentative agreement.--Same in both bills. House recedes to qualified offset arrangement rule in the Senate bill with an amendment clarifying that employer includes a federally funded research center.

(4) Eligibility to participate

House and Senate offers.--Same in both bills.

(5) Tax-exempt and State and local employers

Tentative agreement.--Senate recedes with amendment grandfathering plans of tax-exempt employers adopted before July 1, 1986, and State and local employers adopted before May 6, 1986.

3. Employer matching contributions and employee contributions

a. Employer matching and employee contributions

Tentative agreement.--Senate recedes with an amendment to apply all employer matching contributions and employee contributions to a single nondiscrimination test similar to the special nondiscrimination test for cash or deferred arrangements under the House bill. Staff compromise on definition of highly compensated employees. Clarify treatment of employee contributions to contributory defined benefit plans. Adopt uniform definition of compensation. Senate recedes to regulation authority relating to multiple use of alternative nondiscrimination test.

b. Excess contributions

Tentative agreement.--Same in both bills with a modification to provide accounting rules for determining income on excess contributions on a pro-rata basis.

4. Unfunded deferred compensation arrangements of State and local governments and tax-exempt employers

a. Eligible plans

Tentative agreement.--Senate recedes.

b. Required distributions

Tentative agreement.--Same in both bills with modifications to include required beginning date (sec. 401(a)(9)) and excise tax for failure to timely distribute.

5. Deferred annuity contracts

a. Investment earnings

Tentative agreement.--Same in both bills. Provide an exception for qualified funding assets purchased by structured settlement companies. Clarify that annuities held by an employer with respect to a terminated pension plan are exempt from the rule.

b. Early withdrawal tax

Tentative agreement.--Same as uniform 10-percent early withdrawal tax applicable to IRAs.

6. Elective contributions under tax-sheltered annuities

Tentative agreement.--Senate recedes with amendment to

set the cap at the greater of (i) $9,500 or (ii) the cap on elective deferrals under a qualified cash or deferred arrangement, as indexed.

7. Simplified employee pensions

Tentative agreement.--House recedes with an amendment to set special nondiscrimination test at 125 percent and to clarify that matching and nonelective contributions may not be used to satisfy the special nondiscrimination test for an elective arrangement.

8. Section 501(c)(18) plans

Tentative agreement.--House recedes.

B. Minimum Standards for Qualified Plans

1. Coverage rules for qualified plans

Tentative agreement.--House recedes with modifications requiring that one of the following tests be satisfied: (a) 70 percent of all nonhighly compensated employees are covered by the plan, (b) the percentage of nonhighly compensated employees covered by the plan is at least 70 percent of the percentage of highly compensated employees covered, or (c) the group of employees covered by the plan satisfies the present-law fair cross section test and the average benefit provided to nonhighly compensated employees (as a percentage of compensation) is at least 70 percent of the average benefit provided to highly compensated employees (as a percentage of compensation). In applying the coverage tests, elective deferrals under a qualified cash or deferred arrangement are taken into account. Adopt compromise proposal regarding application of the tests, including application on a line of business or operating unit basis.

2. Minimum participation rule

Tentative agreement.--House recedes with a transition rule providing that (1) plans which do not comply with the minimum participation rule must be merged or terminated by the end of the first plan year to which the rule applies, (2) the excise tax on asset reversions would not apply to such a termination or merger, and (3) the present value of accrued benefits must be calculated using an interest rate no lower than a specified rate. Clarify definition of plan for purposes of the rule. Multiemployer plans are exempt from the provision. The Statement of Managers would clarify that the multiemployer exemption is not available to unions for professionals (e.g., doctors or lawyers).

3. Nondiscrimination rules applicable to tax-sheltered annuities

Tentative agreement.--Senate recedes with amendments to (1) clarify the definition of an employer for purposes of the nondiscrimination rules, (2) adopt a January 1, 1989, effective date, (3) apply the same coverage and nondiscrimination tests to nonelective and matching contributions as apply to qualified plans, (4) provide that, in applying the nondiscrimination tests to educational institutions, students who customarily work less than 20 hours per week may be disregarded, and (5) the Secretary is to provide simplified comparability rules.

4. Integration with social security

Tentative agreement.--House recedes with simplified rules to limit disparities to levels comparable to disparities permitted under present law and with rules providing for accrual of such disparities.

5. Definition of highly compensated employee

Tentative agreement.--Compromise proposal, with same method of indexing as applies for purposes of the defined contribution plan dollar limitation under section 415.

6. Top-heavy plans

Tentative agreement.--Same in both bills with an amendment to permit top-heavy determination to be based on any accrual method if that method is used by all plans of an employer being tested; House recedes on effective date.

7. Includible compensation

Tentative agreement.--House recedes on the amount with an amendment to make the rule applicable for section 404 purposes; Senate recedes on method of indexing.

8. Benefit forfeitures

Tentative agreement.--Same in both bills; Senate recedes on effective date.

9. Vesting

Tentative agreement.--House recedes with amendment to provide appropriate conforming amendments to Title I of ERISA pursuant to ongoing consultation with staffs of Committee on Education and Labor and with amendment to reduce the special 100-percent vesting-eligibility rule

from three years of service to two years of service.

C. Withdrawal of Benefits

1. Uniform minimum distribution rules

Tentative agreement.--Senate recedes, with January 1, 1989, effective date; same rules to apply to tax-sheltered annuities.

2. Withdrawals before age 59 1/2

a. Additional income tax on early withdrawals

Tentative agreement.--House recedes with amendments to apply tax to tax-sheltered annuities, reduce the rate to 10 percent, and limit the pre-age 59-1/2 exceptions to death, disability, age 55 and early retirement under the plan, annuities payable over life (or life expectancy) commencing on separation from service and medical expenses to the extent deductible under section 213. Exception for distributions prior to March 15, 1987, if made on account of separation from service in 1986 and taxable in 1986. Exception provided for payments to an alternate payee pursuant to a qualified domestic relations order.

b. Tax-sheltered annuities

Tentative agreement.--Senate recedes, with amendment to limit extension of distribution restrictions to elective contributions only.

c. Direct transfer option

Tentative agreement.--Senate recedes.

3. Uniform tax treatment of distributions

a. 10-year forward averaging

Tentative agreement.--House recedes with clarifying amendment grandfathering 20 percent capital gains rate on qualifying lump-sum distributions for individuals age 50 as of January 1, 1986.

b. Constructive receipt

Tentative agreement.--Same in both bills; Senate recedes on effective date.

c. Basis recovery

Tentative agreement.--Senate recedes on 3-year basis

recovery rule; House recedes with amendments (1) restricting rollovers of partial distributions to distributions on separation from service, (2) modifying the provision preventing avoidance of repeal of 3-year basis recovery rule through certain distributions, and (3) permitting rollovers from frozen savings and loan associations after 60-day period.

4. Loans under qualified plans

Tentative agreement.--Senate recedes.

D. Tax Deferral Under Qualified Plans

1. Overall limits on contributions and benefits

a. Defined contribution plans

Tentative agreement.--House recedes on limit with an amendment to clarify that contributions made by retired nonkey employees for retiree medical coverage are not subject to the 25 percent of compensation limit on annual additions. Senate recedes on indexing.

b. Defined benefit plans

(1) Limits on benefits

Tentative agreement.--House recedes with amendment to exempt tax-exempt employers and organizations from the actuarial reduction provision and the change in normal retirement age.

(2) Phase-in of limit

Tentative agreement.--Same in both bills, with amendments to clarify that, in the case of benefit increases, the section 415 dollar limit on benefits is phased in over 10 years, and to direct the Secretary to provide exceptions for nonabusive benefit increases.

(3) Special rule for police, firefighters, and pilots

Tentative agreement.--House recedes with amendments to (1) clarify that the rule applies to eligible individuals in plans covering full-time police and firefighters, whether or not they cover all employees or only such individuals, (2) index the $50,000 amount, and (3) with respect to pilots, clarify that requirement of benefit commencement at age 60 does not apply to retaining the special floor on early retirement benefits. Senate recedes with respect to correctional officers.

(4) Cost-of-living arrangements

Tentative agreement.--House recedes with amendment to eliminate Senate floor amendments and clarify in the Statement of Managers that the employer-provided cost-of-living subsidy need not be provided unless the employee satisfies any applicable plan conditions (including any required employee contribution).

c. Limit on benefits from more than one plan

Tentative agreement.--Senate recedes with an amendment to grandfather benefits accrued before August 1, 1986, on a pro-rata basis.

d. Tax-sheltered annuities

Tentative agreement.--House recedes with technical modification clarifying that catch-up is available prior to separation from service.

2. Deductions for contributions to qualified plans

a. Profit-sharing and stock bonus plans

(1) Coordination with social security integration

Tentative agreement.--House recedes.

(2) Limit carryforward

Tentative agreement.--Same in both bills; House recedes on effective date.

b. Combination of pension and other plans

Tentative agreement.--Same in both bills except Senate recedes with a technical modification clarifying the rules applicable to fully insured plans, and House recedes on effective date.

c. Nondeductible contributions

Tentative agreement.--Senate recedes, with an effective date for years beginning after December 31, 1986.

3. Asset reversions under qualified plans

Tentative agreement.--House recedes, with an amendment to provide that the ESOP exception expires for reversions received after December 31, 1988.

E. Miscellaneous Pension and Deferred Compensation Provisions

1. Discretionary contribution plans

Tentative agreement.--House recedes effective for plan years beginning after December 31, 1985.

2. Requirement that collective bargaining agreement be bona fide

Tentative agreement.--Same in both bills.

3. Penalty for overstatement of pension liabilities

Tentative agreement.--Senate recedes.

4. Treatment of certain fishermen as self-employed

Tentative agreement.--House recedes.

5. Cash out of certain accrued benefits

Tentative agreement.--House recedes with clarification that certain plan amendments adopting the provision will not constitute a cutback of accrued benefits, with corresponding amendment to Title I of ERISA, and with amendment to increase the $3,500 threshold in the two-tiered maximum rate rule to $25,000.

6. Time required for plan amendments; issuance of regulations and development of section 401(k) model and master and prototype plans

Tentative agreement.--House recedes on time required for plan amendments, issuance of regulations, and master and prototype plans; Senate recedes on section 401(k) model plan.

7. Retirement Equity Act of 1984 (REA) effective date

Tentative agreement.--House recedes.

8. Employee leasing

Tentative agreement.--(1) Raise the safe harbor contribution rate under section 414(n)(5) for a plan maintained by a leasing organization from 7 1/2 percent to 10 percent; (2) require as a condition of the safe harbor that the leasing organization cover 100 percent of its employees (excluding employees who have compensation of less than $1,000 for the year); (3) provide that the safe harbor may not be used if more than 20 percent of the individuals performing substantial services for the recipient organization are leased employees; and (4) provide an exemption from the employee leasing recordkeeping requirements for recipient organizations that have no top-heavy plans and with respect to which

only a de minimis percentage of individuals performing substantial services are not employees.

F. Employee Benefits

1. Statutory employee benefit exclusions

a. Prepaid legal services

Tentative agreement.--Senate recedes with an amendment to provide a transition rule to allow elections of group legal services under a cafeteria plan for all of 1986, rather than only for reimbursements after the date of enactment.

b. Employer-provided transportation

Tentative agreement.--Same in both bills.

c. Employee educational assistance

Tentative agreement.--Senate recedes on expiration date and indexing; House recedes on dollar limit.

d. Dependent care assistance

Tentative agreement.--Senate recedes.

2. Nondiscrimination requirements

Tentative agreement.--Under the compromise proposal, employee benefit plans would be subject to eligibility tests and a benefits test, applicable to each type of benefit. The tests would apply to health plans and group-term life insurance plans. Appropriate nondiscrimination requirements would be applied to dependent care assistance programs. Statement of Managers would include statement that educational assistance and group legal services are subject to present-law nondiscrimination requirements because the exclusions are scheduled to expire, under the agreement, before the effective date of the compromise proposal. Uniform definition of employer, highly compensated employees, excludable employees, and compensation would be applied for purposes of all employee benefit nondiscrimination requirements (including sec. 505) and all rules may be applied on a line of business or operating unit basis. In applying the tests to health plans, employees with other health coverage could be disregarded, and family health coverage could be tested separately. In the case of group-term life insurance, the nondiscrimination rules could be applied to the value of the coverage provided, expressed as a percentage of compensation (with same cap on includible compensation

applicable to qualified plans). In the case of a discriminatory plan, generally only the discriminatory portion of a benefit provided to a highly compensated employee would be taxed if timely reported. Present-law concentration tests would continue to apply. The provisions would be effective for the later of (1) plan years beginning after December 31, 1987, or (2) the earlier of plan years beginning at least 3 months following the issuance of Treasury regulations or after December 31, 1988. House recedes on study of health insurance abuses.

3. Benefits provided under a cafeteria plan

Tentative agreement.--Under the compromise proposal for employee benefit plans, benefits under cafeteria plans would be subject to the general nondiscrimination rules and the present-law cafeteria plan availability test would continue to apply. Generally, different types of benefits could be aggregated for purposes of satisfying the benefits test except for purposes of health plans. Senate recedes on provision relating to full-time life insurance salesmen. Clarify that employees of educational organizations may elect post-retirement life insurance coverage in cafeteria plans. Policy would be fully paid up upon retirement, would have no cash surrender value, and would be eligible for exclusion under section 79. Clarify that salary reduction under cafeteria plans is excluded from FICA and FUTA wage bases.

4. Faculty housing

Tentative agreement.--House recedes with a technical modification to determine imputed rental value of qualified lodging and inclusion in Statement of Managers of the language in the Senate Finance Committee report relating to treatment of faculty housing for prior years.

5. Deductibility of health insurance costs for self-employed individuals

Tentative agreement.--House recedes with amendment to allow deduction for 25 percent (rather than 50 percent) of cost for taxable years beginning after December 31, 1986, and before January 1, 1990.

6. Health benefits for retirees

Tentative agreement.--Senate recedes.

7. Accrued vacation pay

Tentative agreement.--Same in both bills, except House

recedes on effective date.

G. Employee Stock Ownership Plans (ESOPs)

1. ESOPs as employee benefit plans

a. Status as retirement plans

Tentative agreement.--Senate recedes.

b. Vesting

Tentative agreement.--House recedes.

c. Nondiscrimination

Tentative agreement.-- House recedes.

d. Diversification

Tentative agreement.--Senate recedes.

e. Voting rights

Tentative agreement.--House recedes.

f. Overall limits on contributions

Tentative agreement.--House recedes.

g. ESOP tax credits

Tentative agreement.--House recedes with an amendment to adopt the House bill provision relating to a certain tax-credit ESOP.

h. Distribution restrictions

Tentative agreement.--House recedes, except Senate recedes on provision requiring security where the option price is paid over time.

i. Independent appraiser

Tentative agreement.--Senate recedes.

2. Incentives for ESOP financing

a. Deduction for dividends paid

Tentative agreement.--House recedes.

b. Exclusion of interest earned on securities acquisition loans

Tentative agreement.--House recedes with an amendment applying the interest exclusion provision to refinancing of loans used to acquire employer securities after May 23, 1984.

c. Tax-deferred rollover of gain derived from sales of stock to an eligible employee organization

Tentative agreement.--House recedes.

d. Payment of estate tax by an employee organization

Tentative agreement.--House recedes.

e. Estate tax exclusion for sales to ESOPs

Tentative agreement.--House recedes for sales after the date of enactment and before January 1, 1992.

XII. Foreign Tax Provisions

(House recedes as to effective dates, and transition rules are open, except where otherwise indicated.)

A. Foreign Tax Credit

1. Separate foreign tax limitations

a. Overall limitation.--Same in both bills.

b. Separate limitations for different types of income

(1) Separate limitation for banking and insurance income

Tentative agreement.--Senate recedes, except as to insurance income. Interest earned in connection with export activities of the taxpayer or a related person is not subject to the separate limitation. House recedes as to insurance income.

(2) Separate limitation for shipping income

Tentative agreement.--Senate recedes.

(3) Separate limitation for foreign currency translation gains

Tentative agreement.--House recedes, so there is no separate limitation.

(4) Separate limitation for passive income

(i) Passive income generally is subpart F foreign personal holding company income as modified.

Tentative agreement.--House recedes.

(ii) Foreign personal holding company and passive foreign investment company inclusions are passive income.--Same in both bills.

(iii) Passive income does not include:

(A) Banking and insurance income (subject to its own separate limitation in House bill; under Senate amendment, passive banking and insurance income is subject to separate limitation for passive income)

Tentative agreement.--Senate recede except as to insurance income.

(B) Shipping income (subject to its own separate limitation in House bill only)

Tentative agreement.--Senate recedes.

(C) Foreign oil and gas extraction income.--Same in both bills.

(D) Active business rents and royalties from unrelated parties.--Same in both bills.

(E) High withholding tax interest (subject to its own separate limitation in Senate amendment only)

Tentative agreement.--House recedes.

(F) Interest on working capital (Senate amendment only)

Tentative agreement.--Adopt de minimis rule only for controlled foreign corporations. The separate limitation for passive income would not apply to passive income of a controlled foreign corporation that has no subpart F inclusion because it satisfies the subpart F de minimis rule. The subpart F de minimis rule would be amended so that it applies if gross foreign base company income is less than the lesser of (i) 5 percent of gross income or (ii) $1 million.

(G) Dividends on working capital received from a regulated investment company (Senate amendment only)

Tentative agreement.--Dividends on working capital received by a controlled foreign corporation from a regulated investment company would be eligible for the de minimis rule described at (F) immediately above.

(iv) High tax kick-out rule (House bill); Anti-abuse regulations (Senate amendment)

Tentative agreement.--Adopt both House and Senate provisions with following limitations on House provision:

(A) as to dividends and Subpart F inclusions, high-taxed income exclusion generally applies on a corporation-by-corporation basis, not on an item-by-item basis;

(B) high-taxed income exclusion applies only at U.S. taxpayer level.

(5) Look-through rules

Tentative agreement.--As to controlled foreign corporations, House recedes with amendment treating taxable interest payments from controlled foreign

corporations to related persons as consisting of passive income to the extent of the payor's passive income (computed prior to the operation of Subpart F) and with other technical modifications. Adopt a separate foreign tax credit limitation for each noncontrolled foreign corporation that pays dividends eligible for deemed paid foreign tax credit (with separate treatment for amounts attributable to high withholding tax interest). Interest received from noncontrolled foreign corporations is treated as passive income. Rents and royalties received from noncontrolled foreign corporations are treated as passive or active without reference to look-through rules.

c. Foreign tax credit carryforwards and carrybacks

Tentative agreement.--House recedes.

2. Credit for high withholding taxes on interest

Tentative agreement.--House recedes as to separate basket. Senate recedes to House transitional rule, except with respect to 34 International Monetary Fund member countries, where transition relief is phased out over 5 years. Add amendment which expands the provision from financial institutions to any persons (except as to interest received in connection with export financing by the recipient or related persons).

3. Deemed-paid credit

Tentative agreement.--Senate recedes.

4. Effect of foreign and U.S. losses on foreign tax credit

Tentative agreement.--House recedes.

5. Subsidies

Tentative agreement.--House recedes.

B. Source Rules

1. Sales of personal property

Tentative agreement.--House recedes, and provides for Treasury study which would evaluate current law's title passage rules in light of lower rates. Treasury is also directed to take into account the trade concerns of Congress.

2. Transportation income

a. Source of income

Tentative agreement.--House recedes.

b. Special rules for vessels and aircraft--Same in both bills.

c. Reciprocal exemptions

(1) Types of income eligible for exemption

Tentative agreement.--House recedes.

(2) Classification of residents

Tentative agreement.--House recedes.

d. Gross basis withholding tax

(1) Application of gross tax

Tentative agreement.--Senate recedes.

(2) Method of collection

Tentative agreement.--House recedes.

(3) Determination of effectively connected income

Tentative agreement.--Senate recedes.

Effective date

Tentative agreement.--House recedes, including general transition rule.

3. Other offshore income and income earned in space

Tentative agreement.--House recedes.

4. Dividend and interest income

a. 80/20 entities

Tentative agreement.--Senate recedes to House bill's general rule; except for dividends paid to U.S. persons, tentative agreement provides look-through treatment for active foreign businesses. Senate does not accept House offer's proposed 10% floor on payments to related foreign persons because minimum tax agreement limits foreign tax credit. Effective for taxable years beginning after 1986, but Senate recedes to House grandfather for pre-1986 debt.

b. Interest not subject to U.S. tax.--Same in both bills.

5. Allocation of interest and other expenses (other than research and development)

Tentative agreement.--Senate recedes with amendment adopting Senate specific company transition rules and providing for netting in appropriate cases. Effective for ~~taxable~~ years after 1986 with general House phase-out.

6. Allocation of research expenses to foreign source income

Tentative agreement.--Senate recedes.

C. U.S. Taxation of Income Earned Through Foreign Corporations

1. Tax haven income subject to current tax

a. Tax haven income generally

(1) Add the following passive types of income to subpart FPHC income:

(i) Gain from sales of property which does not generate active income

Tentative agreement.--House recedes.

(ii) Income from commodities transactions

Tentative agreement.--House recedes.

(iii) Foreign currency gains

Tentative agreement.--House recedes.

(iv) Passive leasing income generally--Same in both bills.

~~(v)~~ Income equivalent to interest (Senate amendment only)

Tentative agreement.--House recedes.

(vi) Payments from related persons in the same foreign country that reduce the FPHC income of the payor--Same in both bills.

(vii) Rents and royalties routed through a related party in a country that is neither that of creation nor that of use (House bill only)

Tentative agreement.--House recedes.

(2) Repeal the reinvestment exception for shipping income. (House bill only)

Tentative agreement.--Senate recedes.

(3) Repeal the subpart F banking exceptions (House bill); limit these exceptions to bona fide, active banking operations (Senate amendment)

Tentative agreement.--Senate recedes, except that interest earned by U.S.-controlled foreign banks in connection with export financing for related U.S. persons would be eligible for deferral to the same extent that it is so eligible under present law.

(4) Extend same country exclusion to dividends attributable to specified mining-related income (Senate amendment only)

Tentative agreement.--Senate recedes.

(5) Amend definition of tax haven insurance income (House bill only)

Tentative agreement.--Senate recedes.

(6) Replace the subjective tax-avoidance test for exemption from subpart F with an objective, tax rate-based test. (House bill only)

Tentative agreement.--Senate recedes.

b. Determination of U.S. control of foreign corporation

Tentative agreement.--House recedes (including rule for certain trust distributions).

c. De minimis tax haven income rule

Tentative agreement.--The subpart F de minimis rule is amended so that it applies only if gross foreign base company income is less than the lesser of (i) 5 percent of gross income or (ii) $1 million.

d. Possessions corporations

Tentative agreement.--Same in both bills.

e. Use of deficits

Tentative agreement.--To coordinate the subpart F rules and the passive basket rules, prior year deficits in earnings and profits and other companies' deficits in earnings and profits would not reduce subpart F income.

Income that is recaptured as passive income under the foreign loss recharacterization rule is Subpart F income in accordance with the character of the original income requiring recapture. Effective for taxable years after 1986.

2. Application of accumulated earnings tax and personal holding company tax to foreign corporations

Tentative agreement.--Same in both bills, effective for gains and losses realized on or after January 1, 1986.

3. Deduction for dividends received from foreign corporations

Tentative agreement.--House recedes, with modifications preventing double benefits.

D. Special Tax Provisions for U.S. Persons

1. Possession tax credit

a. Income-based credit

Tentative agreement.--Senate recedes on cost-sharing; House recedes on other issues, with a technical amendment.

b. Qualified possession source investment income (QPSII)

Tentative agreement.--House recedes. As to CBI loan fund commitment, Puerto Rico is to demonstrate good faith effort to implement the twin-plant program.

c. Wage credit.--Same in both bills.

2. Other rules with respect to U.S. possessions

a. U.S. Virgin Islands

Tentative agreement.--House recedes.

Effective date

Tentative agreement.--Senate recedes only as to application of V.I. inhabitant rule to V.I. income (with targeted grandfather rule).

b. Guam, the Northern Mariana Islands, and American Samoa

Tentative agreement.--Same in both bills, with amendment applying expatriate rules to U.S. persons who move to possessions (without regard to motive) effective January 1, 1986. Otherwise, House recedes as to effective date.

3. Taxation of U.S. Government employees of Panama Canal Commission

a. Treaty application

Tentative agreement.--Senate recedes (including effective date).

b. Government employee benefits

Tentative agreement.--House recedes.

4. Foreign sales corporations (FSCs)

Tentative agreement.--House recedes, with amendment to remove FSC benefits for gold effective for taxable years after 1986.

5. Exclusion for private sector earnings of Americans abroad

Tentative agreement.--House recedes.

6. Transfers of intangibles to related parties outside of the U.S.

Tentative agreement.--Senate recedes, effective for taxable years beginning after 1986 for intangibles covered by House bill effective date.

7. Compliance provisions applicable to U.S. persons resident abroad

Tentative agreement.--House recedes.

8. Foreign investment companies

Tentative agreement.--Generally, House recedes but with restrictions (including requirement that foreign fund furnish information) on identification of income and flow-through of income character and with technical modifications.

E. Treatment of Foreign Taxpayers

1. Branch-level tax

Tentative agreement.--House recedes, except as to item (d): (1) to reduce present law's income threshold to 25 percent in connection with second-level withholding tax on dividends, and (2) the withholding tax on interest is based on deduction taken by branch, with amounts in excess of actual branch payments treated as interest paid to a home country parent.

2. Retain character of effectively connected income

Tentative agreement.--House recedes with amendment to delete the provision that taxes removal of assets from U.S. jurisdiction and that steps up basis.

3. Tax-free exchanges by expatriates

Tentative agreement.--Senate recedes (including effective date).

4. Excise tax on insurance premiums paid to foreign insurers and reinsurers

Tentative agreement.--House recedes with an amendment to impose current tax on each U.S. person who owns stock in any 25-percent or more U.S.-owned foreign insurance company with respect to income from insuring risks of U.S. stockholders and related parties, whatever the degree of ownership of the U.S. stockholder. An exception applies to insurance companies whose stock is publicly and freely traded. Similar rules apply to mutual companies. This income is treated as passive income and separately boxed. Effective for years after 1986.

5. Reporting by foreign-controlled corporations

Tentative agreement.--House recedes.

6. Foreign investors in U.S. partnerships

Tentative agreement.--House recedes with an amendment extending the withholding requirement to foreign partnerships, clarifying that the withholding requirement applies to all distributions to a foreign partner when 80% or more of partnership's income is U.S. business income (with a pro rata rule in cases of less U.S. business income), and coordinating this withholding provision with existing withholding provisions so as to avoid duplicative withholding.

7. Income of foreign governments

Tentative agreement.--House recedes with clarification that current law is retained for international organizations. Effective July 1, 1986.

8. Transfer prices for imports

Tentative agreement.--House recedes.

9. Dual resident companies

Tentative agreement.--House recedes with amendments extending provision to all double-dipping transactions and replacing deconsolidation remedy with remedy barring shifting of losses.

10. Interest paid to related tax-exempt parties

Tentative agreement.--Senate recedes.

F. Foreign Currency Exchange Gain or Loss

1. Functional currency concept

2. Identification of functional currency

a. General rule

b. Activities primarily conducted in dollars

c. Election to use U.S. dollar

3. Change in functional currency as method of accounting

4. Foreign currency transactions

a. Definition of foreign currency transactions

b. Character of exchange gain or loss

c. Source

d. Current accrual

e. Tax straddle provisions

f. Application to transactions of a personal nature

5. Foreign currency translation

a. Translation method

b. Exchange gain or loss on distribution of earnings

c. Calculation of foreign taxes eligible for credit

d. Rule when accrued taxes when paid differs from amounts claimed as credits

e. Regulatory authority

Tentative agreement.--House recedes with amendments to delete exception for mixed straddles in the definition of foreign currency transactions, to treat gain or loss on distributions of previously taxed income as foreign

source, to translate foreign taxes at payment date for purposes of direct and indirect credit, and to make technical modifications.

XIII. Tax-exempt Bonds

I. General Restrictions on Tax-Exempt Bonds (p. 183)

A. On the percentage or amount of use by persons other than State or local governmental units ("private use") permitted before a bond becomes a private activity bond (called a nonessential function bond in the House bill), the Senate recedes to the House with modifications increasing the House's $10 million limit to $15 million and applying the dollar limit only in the case of financing for construction, rehabilitation, or operation of output facilities. Clarification is provided that bonds transitioned under Treas. Reg. sec. 1.103-7(b)(iii) are treated consistent with the transition rule in the regulations.

B. On the security interest test for determining whether a bond is a private activity bond, the House recedes to the Senate with a conforming amendment to reflect permitted use of bond proceeds by persons other than State or local governmental units.

C. On the related use requirement, the House recedes to the Senate with a modification clarifying that private use satisfies this requirement only if the private financing is proportional to the total amount of financing provided by the issue for the "related" governmental facility and with conforming amendments to reflect the 10%/$15 million limits.

D. On the definition of private loan bond, the Senate recedes to the House.

E. On the exceptions to the private loan bond restriction, the House and Senate concur on the definition of excluded loans, and on deletion of the sunset date for private activity bonds issued as part of the Veterans' Land Bond Program. The House recedes to the Senate on private activity bonds issued as part of the Renewable Source Small Energy Conservation Program and the Industrial New Jobs Training Program (including technical modifications to the Senate amendment). (Bonds are subject to the new volume caps.)

As with other private activity bonds, 95% or more of the proceeds of these bonds must be used for the exempt purpose of the borrowing (determined with the modifications on costs of issuance described in II.B.1., below).

F. On the new management contract guidelines, the House recedes to the Senate with a modification providing that at least 50% of payments must be on a fixed-fee basis.

The House and Senate concur on the treatment of certain pooling and exchange agreements and on the treatment of spot sales of surplus power by governmental utilities. The

Treasury further is directed to modify the present rules for determining private use of output facilities (Treas. reg. sec. 1.103-(7)(b)(5)) to reflect the reduced limits on private use of governmental bonds and to delete the de minimis 3% rule.

G. On volunteer fire department bonds, the House recedes to the Senate as to the status as qualified issuers, with a clarification that at least 95 percent of the bond proceeds must be used for the purpose of the borrowing (determined with the modifications on costs of issuance described in II.B.1., below.)

H. On cooperative research arrangements, the House recedes to the Senate with a modification clarifying that the competitive price requirement is determined when technology is available for use.

Effective dates.--As provided in the Joint Statements on Effective Dates of March 14, 1986, and July 17, 1986, (the "Joint Statements"), the conference agreement applies to bonds issued after the earlier of date of enactment or September 1, 1986, except the following provisions which apply with respect to bonds issued after August 15, 1986 --

(1) The rule that indirect payments satisfy the security interest test;
(2) The modified private loan bond rule and the exceptions described above to that restriction;
(3) The volunteer fire department bond rules; and
(4) The rules on cooperative research agreements.

The House and Senate concur on the generic transition rules contained in both bills, with September 25, 1985, September 26, 1985, and January 1, 1986, dates.

II. Tax-Exempt Bonds for Certain Private Activities (p. 187)

A. On the types of private activity bonds for exempt facilities for which financing is permitted (p. 187) --

1. Multifamily rental housing -- The House and Senate concur with the following modifications--

a. Low-income set-aside requirements are either (i) 40% of units occupied by persons having incomes of 60% of area median income or less, or (ii) 20% of units occupied by persons having incomes of 50% or less of area median income (like new low-income housing credit targeting rules).

b. The Senate recedes to the House on the 15-year term of the qualified project period.

c. The House recedes to the Senate on the "comparable or smaller size" rule in the continuous compliance requirement.

d. The House recedes to the Senate on the exception for certain projects electing special set-aside and rent-skewing requirements, with technical modifications to reflect revised targeting rules in a., above.

2. Airports -- The House recedes to the Senate with modifications providing that in addition to hotels, tax-exempt airport bonds may not be used to finance (i) retail shops (including food and beverage facilities) in excess of a size necessary to serve passengers and employees at the airport; (ii) retail facilities for passengers (e.g., rental car lots) located outside the terminal; (iii) office buildings for nongovernmental persons (other than airport authorities); or (iv) industrial parks or manufacturing facilities.

3. Docks and wharves -- The House recedes to the Senate with modifications providing that tax-exempt dock and wharf facility bonds may not be used to finance (i) hotels; (ii) retail shops (including food and beverage facilities) in excess of a size necessary to serve passengers and employees at the port; (iii) industrial parks or manufacturing facilities; or (v) office buildings for nongovernmental persons (other than port authorities).

4. Mass commuting facilities -- The Senate recedes to the House.

5. Local furnishing of electricity or gas -- The House recedes to the Senate.

6. Local district heating or cooling -- The House recedes to the Senate.

7. Facilities for furnishing of water -- The House recedes to the Senate.

8. Hydroelectric facilities -- The House and Senate concur except the House recedes to the Senate on retention of the present-law transition rule, with clarification that the application required to be docketed is an application for license (rather than application for preliminary permit).

9. Hazardous waste disposal facilities -- The House recedes to the Senate with the following modifications --

a. Facilities eligible for financing are limited to disposal facilities to incinerate or entomb hazardous waste.

b. Eligible facilities must be owned and operated by persons not related to the producers of the hazardous waste. An

exception is provided for facilities owned or operated by the waste-producer permitting bond financing only of the part of the facility used by the general public.

c. Facilities must receive and dispose of hazardous waste from the general public (as opposed to facilities serving only a single or a limited group of persons).

10. Sports facilities, convention and trade show facilities, parking facilities, and pollution control facilities -- The House and Senate concur on repeal.

11. Sewage and solid waste disposal facilities -- The House and Senate concur on retention except the Senate recedes on the exception for alcohol and steam generation facilities.

Effective date.--Bonds issued after August 15, 1986, with transitional exceptions like those in I., above; the exception for hazardous waste disposal facility bonds is effective for bonds issued after date of enactment.

B. On the miscellaneous restrictions on bonds for exempt facilities (p. 189) --

1. Use of bond proceeds for purpose of issue -- The House recedes to the Senate's 95% use requirement with a modification providing that costs of issuance (including attorneys' fees and underwriter's spread) do not count toward satisfaction of the 95% requirement and further accepts the Senate's requirement that aggregate costs of issuance paid from bond proceeds may not exceed 2% of the amount of the bonds.

Effective date.--Bonds issued after August 15, 1986.

2. Functionally related and subordinate test -- The House recedes to the Senate (i.e., retains present law) with a modification limiting office space financed with exempt-facility bonds to office space located at the exempt facility and of a size necessary for the facility's day-to-day operations (as opposed to administrative office buildings -- a rule similar to that which applies under the small-issue bond definition of manufacturing).

Effective date.--Bonds issued after August 15, 1986.

3. Ownership of bond-financed property -- The Senate recedes to the House with a modification providing that the Senate's safe-harbor for airports and docks and wharves is used to determine governmental ownership.

Effective date.--Bonds issued after August 15, 1986, with transitional exceptions like those in I. above.

C. On repeal of industrial park bonds (p. 189) -- The House and the Senate concur.

Effective date.--Bonds issued after August 15, 1986, with transitional exceptions like those in I., above.

D. On small-issue bonds (p. 190) --

1. The House recedes to the Senate on sunset dates for nonmanufacturing facilities and on the treatment of first-time farmer bonds as manufacturing bonds. The House and Senate concur on a modification extending the sunset date for small-issue bonds for manufacturing facilities for one year, through December 31, 1989.

2. The House recedes to the Senate on the 95% use test (determined with the modifications on costs of issuance described in B.1., above), and the limitation on financing depreciable farm property.

3. The House recedes to the Senate on the liberalization of eligibility rules for first-time farmers.

4. The House recedes to the Senate on the Senate's expansion of the rule for financing used farm equipment for first-time farmers.

Effective date.--Bonds issued after August 15, 1986.

E. On student loan bonds (p. 190) -- The House and Senate concur on requiring at least 90 percent of proceeds (determined with the modifications on costs of issuance described in B.1., above) of bonds issued in connection with the GSL or PLUS programs be used to finance student loans. In the case of supplemental student loan bonds, 95% is substituted for 90%.

A further modification is added providing that student loan bonds may not be issued to finance loans to students who are enrolled in schools outside the issuing State unless the students are legal residents of the issuing State.

Effective date.--Bonds issued after August 15, 1986.

F. On mortgage revenue bonds (p. 191) --

1. The House recedes to the Senate on the retitling of the bonds.

2. The House and Senate concur that 95 percent (50 percent in targeted areas) of bond proceeds (other than amounts deposited in a reasonably required reserve fund) must be used for loans to first-time homebuyers, and with a conforming amendment limiting bond-financed costs of issuance (see, B.1., above).

3. On income limits, the House and Senate concur on modified income limits providing that, except in targeted areas, all bond-financed loans must be made to persons having incomes of 115 percent or less of the higher of area or State median income. The Senate recedes to the House income limits for targeted areas.

4. The Senate recedes to the House on the purchase price limits for bond-financed residences.

5. The Senate recedes to the House on repeal of the present-law required annual Treasury report.

6. The House recedes to the Senate on the MCC trade-in rate.

7. The House recedes to the Senate on the treatment of bonds for and shareholders in qualified limited equity cooperatives.

8. The House and Senate concur on a modification extending the present-law sunset date on qualified mortgage bonds for one year, through December 31, 1988.

9. On qualified veterans' mortgage bonds, the House recedes to the Senate with a modification providing that 95% of bond proceeds must be used to finance veterans' mortgage loans (determined with the modifications on costs of issuance described in B.1., above).

10. The House and Senate concur on a modification to the rule limiting bond-financed costs of issuance for mortgage revenue bond issues not exceeding $20 million. For such issues, the 2% limit is increased to 3-1/2%.

Effective date.--Bonds issued and MCCs issued with respect to bond authority exchanged after August 15, 1986.

G. On section 501(c)(3) organization bonds (p. 192) --

1. The House recedes to the Senate's requirement that 95% of bond proceeds be used for the purpose of the borrowing (determined with the modifications on costs of issuance described in B.1., above).

2. The Senate recedes to the House on the maximum amount of nonhospital bonds that an organization may have outstanding at any one time.

3. The House and Senate concur on the ownership requirement for section 501(c)(3) organization bond-financed property.

Effective date.--Bonds issued after August 15, 1986, with transitional exceptions like those in I., above for item 3.

H. On qualified redevelopment bonds (p. 193) --

1. General rules -- The House and Senate concur except the House recedes to the Senate's 95% use requirement (determined with the modifications on costs of issuance described in B.1., above).

The House and Senate concur on a modification permitting qualified redevelopment bonds to be secured by pledges of generally applicable taxes if the taxes are the principal security for the bonds.

2. Uses of bond proceeds -- The House and Senate concur except the House recedes to the Senate on the definition of fair market value and the rules relating to the power of eminent domain.

3. Designation of blighted areas -- The House and Senate concur, with the following clarifications and modifications --

a. Aggregate blighted areas in jurisdiction -- The House and Senate concur on a modification limiting the maximum areas in a general purpose governmental unit to 20 percent of total assessed property value and a rule clarifying computation of the percentage in the case of districts designated in different years (i.e., percentages determined at time of designation are aggregated for purposes of the test).

Districts designated before January 1, 1986, and with respect to wnich qualifying activities were in progress on that date, do not count towards the 20-percent rule and need not be redesignated using the new statutory criteria; however, no new districts or expansions of existing districts may commence until the jurisdiction complies with the 20 percent limitation and no new bonds may be issued for activities in grandfathered existing districts if the activities are not eligible for bond-financing under the compromise agreement.

b. Minimum area size -- The House and Senate concur on a modified rule as follows --

(1) A designated area may not be smaller than 100 contiguous acres unless the requirements of ii. are satisfied.

(2) A designated area may be smaller than 100 acres if (i) the area is at least 10 contiguous acres and (ii) no more than 25% of the bond-financed land in the area is provided to one person (or group of related persons), determined pursuant to a preapproved plan (as opposed to on an issue-by-issue basis).

c. Basis of designations -- The House and Senate concur that a finding is required that a substantial number of the

statutory factors are present in an area is necessary for designation as blighted.

4. Application of IDB limitations -- The House recedes to the Senate on the requirements for housing constructed on bond-financed land.

The House recedes to the Senate on the rules for financing land for otherwise specifically restricted facilities, with a modification prohibiting financing of facilities for sale of alcoholic beverages for consumption off premises.

Effective date.--Bonds issued after August 15, 1986.

I. Miscellaneous restrictions on tax-exempt bonds (p. 196) --

1. Restriction on maturity of bonds -- The House recedes to the Senate.

Effective date.--Bonds issued after August 15, 1986.

2. Land and existing property and prohibited facilities -- The House recedes to Senate on land and existing facilities.

The Senate recedes to the House on specifically restricted or prohibited facilities.

Effective date.--Bonds issued after August 15, 1986, with transitional exceptions like those described in I., above.

3. Public approval -- The Senate recedes to House.

Effective date.--Bonds issued after December 31, 1986.

4. Change in use requirements -- The House and Senate concur.

Effective date.--Changes in use occurring after August 15, 1986.

III. Volume Limitations (p. 197)

A. A new volume cap is provided in lieu of the present-law private activity bond and qualified mortgage bond volume caps. The new unified cap for each State is equal to the greater of $75 per resident of the State or $250 million, until December 31, 1987, after which date the cap is reduced to the greater of $50 per capita or $150 million. There are no set-asides for particular types of bonds.

B. The new volume cap applies to all private activity bonds (e.g., exempt facility bonds, small-issue bonds, qualified redevelopment bonds, student loan bonds, qualified mortgage bonds, and private loan bonds for which tax-exemption is provided) other than the following --

1. Qualified 501(c)(3) bonds;

2. Exempt-facility bonds for airports and docks and wharves;

3. Exempt-facility bonds for solid waste disposal facilities, if all property financed with the bonds is governmentally owned (determined as provided in the Senate amendment); and

4. Qualified veterans' mortgage bonds, which remain subject to their separate present-law volume cap.

C. Private use of the proceeds of a governmental bond in excess of 15 million (and up to the permitted 10%) is subject to the new volume cap. (Thus, this rule only applies to bond issues in excess of $150 million.)

D. The House and Senate concur on a technical clarification that U.S. possessions having populations of less than 500,000 receive volume caps equal to the current actual per capita amount received by the State with the smallest population).

E. The House and Senate concur on rules for carryforward elections similar to those in the House bill, with a further clarification that the name of the user of an exempt facility and the proposed address of the facility need not be specified when a carryforward election is made provided the facility can otherwise be identified with reasonable certainty.

Effective date.--Bonds issued after August 15, 1986, subject to transitional exceptions like those provided in the House bill.

(The present-law private activity bond volume cap and qualified mortgage bond cap are replaced by the new unified cap, effective for bonds issued after August 15, 1986.)

IV. Arbitrage Restrictions (p. 200)

A. General restrictions (p. 200) --

1. Profit limitations -- The House and Senate concur except the House recedes to the Senate's provision on the treatment of letter of credit fees as interest expense in certain cases, with a clarification that credit enhancement fees are treated as interest only to the extent that the fees represent a charge for transfer of credit risk (i.e., indirect payment of costs of issuance through credit enhancers may not be recovered as interest expense).

Effective date.--Bonds issued after August 15, 1986.

In the case of bonds and provisions covered under the Joint

Statements, the provisions apply to bonds issued after the earlier of the date of enactment or September 1, 1986.

The restriction on bonds issued to fund deferred compensation arrangements applies to bonds issued after September 25, 1985.

2. Exceptions --

a. On temporary period rules, the Senate recedes to the House with amendments limiting and modifying the House's special temporary period rules as follows --

(i) New statutory temporary period rules apply only to pooled financings (other than mortgage revenue bonds).

(ii) Initial temporary periods for pooled financings are limited to 6 months (other than certain GSL and PLUS student loan bonds during a two-year transition period, described in B.1.b., below).

(iii) Temporary periods for repayments to pools that will be re-lent are limited to 3 months.

Effective date.--Bonds issued after August 15, 1986, except bonds issued after the earlier of date of enactment or September 1, 1986, in the case of bonds covered under the Joint Statements.

b. The House recedes to the Senate on the exception for a minor portion, with a modification limiting reserve funds to no more than 10 percent of bond proceeds unless Treasury specifically approves a larger amount for an issue.

Effective date.--Bonds issued after August 15, 1986, except the earlier of date of enactment or September 1, 1986, in the case of bonds covered under the Joint Statements.

3. Determination of bond yield -- The House and Senate concur.

Effective date.--Bonds issued after December 31, 1985.

B. Extension of additional IDB restrictions (p. 201) --

1. Bonds other than mortgage revenue bonds -- The House and Senate concur, including on the following --

a. The House and Senate concur on a modified rebate exception for certain bonds issued to to finance activities of small governmental units providing that eligibility for the exception is determined by reference to governmental bonds issued by the governmental unit and governmental units subordinate to it.

b. The House and Senate concur on a transition rule to the arbitrage rebate requirement in the case of GSL and PLUS student loan bonds, as follows --

(i) Arbitrage earned on GSL and PLUS student loan bonds during an initial 18-month temporary period is not subject to the rebate requirement, to the extent that (1) the bond proceeds are used by the end of the 18-month period to finance student loans, (2) the arbitrage profits are used to pay costs of issuance and reasonable administrative costs financed with proceeds of the issue, and (3) the costs are not reimbursed.

(ii) The transition rule does not apply to bonds issued after December 31, 1988.

c. The House and Senate concur on a modified penalty for errors in or late payments of arbitrage rebate. Under this rule, Treasury is authorized to waive loss of tax-exemption on the bonds where the error or late payment is not due to willful neglect and to condition such relief upon payment of a penalty of not more than 50% of the amount not properly paid. Interest accrues on the amount not properly paid in the same manner as on late payments of tax.

d. The House and Senate concur on a safe-harbor for determining when proceeds of tax and revenue anticipation notes are treated as expended for purposes of the arbitrage rebate requirement. Under this safe-harbor, if at the end of six months (or a lesser period if the term of the bonds is shorter) after issuance, the cumulative cash flow deficit of the governmental unit has exceeded 90% of the issue size, proceeds are treated as having been spent. Cumulative cash flow deficit is defined under the safe-harbor as the excess of the amount the governmental unit spends during the six month period (or lesser period if the term of the bonds is shorter) over the sum of all amounts (other than the bond proceeds) that are available for payment of the expenses during the period. (Redemption of bonds is not treated as expenditure for a governmental purpose under the arbitrage rebate rules.) (This safe-harbor does not affect the amount of anticipation notes that may be issued or that qualify for temporary periods.

e. The Senate recedes to the House on deletion of the Senate's unlimited exception from rebate for certain current debt service funds.

2. Additional restrictions on mortgage revenue and student loan bonds -- The House and Senate concur.

C. Modification of SLGS program (p. 202) -- The House recedes to the Senate.

Effective date.--(Items B. and C.) -- Bonds issued after December 31, 1985, except --

(1) in the case of bonds and provisions covered under the Joint Statements, bonds issued after the earlier of date of enactment or September 1, 1986;

(2) in the case of the arbitrage rebate requirement for certain pooled financing, bonds issued after 3:00 p.m. E.D.T., July 17, 1986;

(3) in the case of the direction to modify the SLGS program, date of enactment.

V. Restrictions on Advance Refundings (p. 202)

A. The House and Senate concur on permitting section 501(c)(3) bonds as well as governmental bonds to be advance refunded.

B. The House and Senate concur on a modified definition of advance refunding providing that advance refunding bonds are bonds issued more than 90 days before redemption of the refunded bonds and on a technical clarification providing that refundings occurring before January 1, 1986, are treated as advance refundings only if the refunded bonds were not redeemed within 180 days of issuance of the refunding bonds.

C. The House and Senate concur on a modification to the number of times each original issue of bonds may be advance refunded, as follows --

1. Bonds originally issued before January 1, 1986 -- 2 times, with a transition rule permitting one additional advance refunding after March 14, 1986, in the case of such bonds advance refunded 2 or more times before that date.

2. Bonds originally issued after December 31, 1985 -- 1 time.

D. Technical provisions --

1. The House recedes to the Senate's requirement that refunded bonds be redeemed no later than the first date on which their call is not prohibited in case of refundings producing debt service savings, with a modification limiting application of the rule to refundings of bonds originally issued after December 31, 1985.

2. The Senate recedes to the House's requirement that refunded bonds be redeemed no later than the first date on which the issue may be called at a premium of 3% or less, with modifications limiting application of the rule to bonds originally issued before January 1, 1986, and to advance refundings that may produce a debt service savings.

3. The House and Senate concur on new temporary period rules for advance refundings.

4. The House recedes to the Senate on the application of the 150% limitation on nonpurpose investments to advance refunding escrow accounts and on the Senate's prohibition on abusive transactions.

5. The Senate recedes to the House on deleting the Senate's restriction on the total number of issues that may be outstanding at any time.

6. The House and Senate concur on a modification providing that reserve funds and minor portions for advance refunding bonds may not exceed the lesser of the amount so dedicated for the refunded bonds or the amount permitted under the bill.

7. The Senate recedes to the House on inclusion under the new volume cap of the private use portion in excess of $15 million in the case of advance refundings of governmental bonds.

Effective date.--Advance refunding bonds issued after --

(1) August 15, 1986, in the case of advance refundings of 501(c)(3) organization bonds, other private activity bonds for which advance refunding is permitted under present law, and governmental bonds originally issued after that date; and

(2) The earlier of date of enactment or September 1, 1986, in the case of bonds and provisions covered by the Joint Statements, except December 31, 1985, in the case of provisions not included in the Joint Statements.

VI. Restrictions on Early Issuance (p. 203)

The House recedes to the Senate.

VII. Information Reporting (p. 204)

The House and Senate concur.

Effective date.--Bonds issued after December 31, 1986. (Bonds presently subject to this requirement are not affected by the provision.)

VIII. Targeted Transition Rules

Open.

IX. General Stock Ownership Corporations

The House and Senate concur, including on effective date.

X. Miscellaneous

Refunding of certain FSLIC-guaranteed bonds -- The House and Senate concur on a modification permitting one current refunding of certain FLSLIC- and FDIC-guaranteed bonds provided that no additional volume of outstanding bonds results and certain other requirements rendering the refunding in substance a renegotiation of interest rates are satisfied, with clarifications that the refundings are subject to all new arbitrage provisions of the bill and that the refunded bonds were used to finance multifamily rental housing.

Effective date.--Bonds issued after date of enactment.

XIV. Trusts and Estates; Minor Children; Gift and Estate Taxes; Generation-Skipping Transfer Tax

A. Income Taxation of Trusts and Estates

1-5. Trusts other than grantor trusts

The House bill establishes an entirely new set of rules governing the taxation of trusts other than grantor trusts. The Senate amendment generally retains present law with respect to the taxation of nongrantor trusts, except (1) the Senate amendment applies compressed rate brackets to nongrantor trusts and (2) requires that all trusts adopt a taxable year ending in October, November or December.

Tentative agreement.--House recedes with an amendment requiring trusts, other than charitable trusts, to use a calendar year as its taxable year.

6. Grantor trusts

House and Senate offers.--House recedes to the provisions of the Senate amendment eliminating the present law 10-year exception and the exception for spousal remainder trusts from the grantor trust rules.

7. Estates

House and Senate offers.--House recedes to the provisions of the Senate amendment taxing the undistributed income of an estate for taxable years beginning more than 2 years after the death of the decedent at the same rates as those applicable to nongrantor trusts, with an amendment taxing the income of an estate during its first two years at the rates applicable to nongrantor trusts.

8. Payment of estimated income tax by trusts and estates

House and Senate offers.--House recedes to the provisions of the Senate amendment requiring that trusts and estates make estimated payments of income taxes, with an amendment providing an exemption for an estate's first two years. House also recedes to the provision of the Senate amendment that repeals the rule of present law that permits an estate to pay its taxes over 4 equal installments.

9. Effective date

House and Senate offers.--House recedes.

B. Unearned Income of a Minor Child

Tentative agreement.--House recedes, with an amendment

taxing unearned income of a minor child, reduced by any standard deduction allocated to unearned income, in excess of $500 at the parent's tax rates. See title I, item 2(c) above. Thus, by allocating $500 of the child's standard deduction to unearned income, only unearned income of a minor child in excess of $1,000 would be taxed at his parent's rates.

C. Gift and Estate Taxes

1. Current use valuation recapture period for pre-1982 estates

Tentative agreement.--Senate recedes.

2. Filing estate tax current use valuation elections

Tentative agreement.--House recedes, with targeted transition rule.

3. Gift tax treatment of certain disclaimers

Tentative agreement.--Senate recedes.

4. Gift and estate tax deductions for certain conservation easements

Tentative agreement.--House recedes to the provision of the Senate amendment permitting a gift or estate tax deduction for qualified conservation contributions without regard to whether the donation satisfies the present-law income tax conservation purpose requirement. The compromise includes a targeted amendment for certain gifts to Acadia National Park.

5. Special rule for estate of James H.W. Thompson

Tentative agreement.--House recedes.

6. Gift and estate tax marital deduction election

Tentative agreement.--Senate recedes.

D. Generation-Skipping Transfer Tax

Tentative agreement.--Senate recedes with an amendment sunsetting the $2 million per grandchild exclusion for direct skips on or after January 1, 1990, with minor technical changes.

XV. Compliance and Tax Administration

A. Penalties

1. Penalties relating to information returns

House and Senate offers.--House recedes.

2. Penalty for failure to pay taxes

a. Penalty

House and Senate offers.--Same in both bills, House recedes on effective date.

b. Cost of collection charge

House and Senate offers.--Senate recedes (i.e., no report).

3. Negligence and fraud penalties

a. Apply penalty only to portion of underpayment due to negligence and increase rate

Tentative agreement.--Senate recedes.

b. Per se negligence penalty

House and Senate offers.--Same in both bills, House recedes on effective date.

c. Apply negligence penalty to all taxes

House and Senate offers.--Same in both bills, House recedes on effective date.

d. Apply fraud penalty only to portion of underpayment attributable to fraud and increase rate

House and Senate offers.--Same in both bills, House recedes on effective date.

4. Penalty for substantial understatement of tax liability

House and Senate offers.--House recedes.

B. Interest Provisions

1. Interest rate

House and Senate offers.--House recedes.

2. Interest on underpayments of accumulated earnings tax

House and Senate offers.--Same in both bills, Senate recedes on effective date.

C. Information Reporting Provisions

1. Information reporting on real estate transactions

House and Senate offers.--House recedes, with reordering of persons responsible for reporting: (1) person responsible for closing, (2) mortgage lender, (3) seller's broker, (4) buyer's broker, (5) any other person designated in Treasury regulations.

2. Information reporting on persons receiving Federal contracts

House and Senate offers.--Same in both bills, House recedes on effective date.

3. Information reporting on State and local taxes

House and Senate offers.--House recedes.

4. Information reporting on royalties

House and Senate offers.--House recedes.

5. Taxpayer identification numbers of dependents required to be shown on tax returns

House and Senate offers.--House recedes, effective for returns filed on or after January 1, 1988. Clarify special rule for religious groups exempt from social security.

6. Tax-exempt interest required to be shown on tax returns

House and Senate offers.--Senate recedes, delaying effective date to returns filed after December 31, 1987.

7. Modify separate mailing requirement for certain information reports

House and Senate offers.--House recedes.

D. Tax Shelter Administration

1. Tax shelter user fee

Tentative agreement--Senate recedes.

2. Tax shelter registration

House and Senate offers.--House recedes.

3. Penalty for failure to register a tax shelter

House and Senate offers.--House recedes with amendment deleting the $10,000 cap of present law.

4. Penalty for failure to report the tax shelter identification number

House and Senate offers.--House recedes.

5. Penalty for failure to maintain lists of investors

House and Senate offers.--House recedes on increasing maximum to $100,000; Senate recedes on increasing $50 penalty.

6. Tax shelter interest

House and Senate offers.--Senate recedes, with amendment providing that sham or fraudulent transactions are subject to present law provision.

E. Estimated Tax Payments

1. Individuals

House and Senate offers.--Same in both bills, House recedes on effective date.

2. Excise tax on private foundation investment income

House and Senate offers.--House recedes.

3. Unrelated business income tax

House and Senate offers.--House recedes.

F. Tax Litigation and Tax Court

1. Awards of attorney's fees in tax cases

Tentative agreement.--House recedes, except Senate recedes on burden of proof.

2. Exhaustion of administrative remedies

Tentative agreement.--House recedes with amendment providing that exhaustion is additional basis for imposition of discretionary penalty by Tax Court.

3. Report to Congress on Tax Court inventory

House and Senate offers.--Senate recedes with amendment

providing report is due every 2 years.

4. Tax Court provisions

House and Senate offers.--Include all the following provisions:

a. Tax Court practice fee

b. Provide Tax Court with jurisdiction over late payment penalties

c. Provide Tax Court with assistance of U.S. Marshals

d. Salary and travel expenses of Special Trial Judges

e. Tax Court Judges' retirement provisions

f. Allow interlocutory appeals to be certified to Court of Appeals

g. Conform survivor's annuities to District Court provisions

G. Tax Administration Trust Fund

Tentative agreement.--Senate recedes.

H. IRS Administration Provisions

1. Suspend statute of limitations during prolonged dispute over third-party records

House and Senate offers.--House recedes.

2. Rescind statutory notice of deficiency

House and Senate offers.--Same in both bills, Senate recedes on effective date.

3. Abate interest due to IRS errors or delays

House and Senate offers.--House recedes, changing $1 million error threshold to $50,000.

Tentative agreement.--Effective after December 31, 1978.

4. Suspension of compounding where interest on deficiency is suspended

House and Senate offers.--Same in both bills, House recedes on effective date.

5. Exemption from levy for service-connected disability payments

House and Senate offers.--Same in both bills, House recedes on effective date.

6. Rules applicable to forfeiture

House and Senate offers.--Senate recedes, effective on date of enactment.

7. Certain recordkeeping requirements

House and Senate offers.--Same in both bills, House recedes on effective date.

8. Disclosure of return information to cities

House and Senate offers.--House recedes.

9. Regulatory Flexibility Act applied to IRS

House and Senate offers.--Senate recedes.

I. Modification of Employee Withholding Schedules

House and Senate offers.--House recedes.

J. Report on Return-Free Tax System

House and Senate offers.--Same in both bills.

XVI. Exempt and Nonprofit Organizations

A. Exchanges and Rentals of Membership Mailing Lists of Certain Tax-Exempt Organizations

House and Senate offers.--Same in both bills.

B. Distribution of Low-Cost Articles by Charities

House and Senate offers.--Senate recedes.

C. Expansion of UBIT Exemption for Certain Trade Show Income

Tentative agreement.--House recedes.

D. Tax-Exemption for Certain Title-Holding Companies

House and Senate offers.--House recedes.

E. Divestiture Exemption for Certain Excess Business Holdings of Private Foundations

Tentative agreement.--Senate recedes.

F. Reduction of Private Foundation Payout Requirement by Certain Costs of Hazardous Waste Removal

Tentative agreement.--Senate recedes.

G. Exception to Membership Organization Deduction Rules

Tentative agreement.--House recedes.

H. Tax-Exempt Status for Technology Transfer Organization

Tentative agreement.--House recedes.

XVII. Other Provisions

A. Targeted Jobs Tax Credit

Tentative agreement.--

(i) 3-year extension
(ii) 40% credit for first-year wages
(iii) no second-year credit
(iv) 90 day/120 hour minimum employment rule

B. Olympic Trust Fund and Excise Tax

House and Senate offers.--House recedes (no provision).

C. Collection of Diesel Fuel Excise Tax

House and Senate offers.--Adopt provision in both bills, with an amendment imposing the gasoline tax on removal of gasoline from the refinery or customs custody (sale, if earlier), effective January 1, 1988. The Treasury is directed to study the incidence of evasion of the gasoline tax and to report to Congress by December 31, 1986.

D. Social Security and FUTA Provisions

1. Allow ministers to reelect social security coverage

Tentative agreement.--House recedes.

2. Common paymaster rule for FICA and FUTA taxes

Tentative agreement.--Senate recedes (no provision).

3. Agricultural wages subject to FUTA

House and Senate offers.--Senate recedes (no provision).

4. FUTA for certain Indian tribes

House and Senate offers.--House recedes.

5. Treatment of certain technical personnel

House and Senate offers.--House recedes with technical modification.

6. Payroll tax deposits

House and Senate offers.--Senate recedes (no provision).

E. Budget-Related Provisions

1. Revenues for budget purposes

Tentative agreement.--Senate recedes.

2. Budget revenue fluctuations

Tentative agreement.--Senate recedes.

F. Tax Code Revisions

1. Reference to Internal Revenue Code

Tentative agreement.--Senate recedes.

2. Moratorium on major tax revisions

Tentative agreement.--Senate recedes.

G. Miscellaneous Provisions

1. Foster care payments

Tentative agreement.--Senate recedes, with amendment to extend exclusion to cover foster care payments for adults.

2. Rules for spouses of Vietnam MIAs

House and Senate offers.--Same in both bills.

3. Exempt certain reindeer income from tax

Tentative agreement.--House recedes.

4. Information on special or unique treatment under tax bill

Tentative agreement.--Senate recedes.

5. Certain quality control studies for AFDC and Medicaid

Tentative agreement.--House recedes.

XVIII. Technical Corrections

Tentative agreement.--Adopt all items that are the same in both bills, as well as the staff recommendation list (JCX-9-86), except, with respect to the item relating to low-interest loans, the requirement that interest be paid annually is deleted. Items described below were not included in that staff recommendation list.

TECHNICAL CORRECTIONS TO THE TAX REFORM ACT OF 1984

I. Tax Reform Generally

A. Tax Freeze Provisions (sec. 1501 of the House bill and sec. 1801 of the Senate amendment)

(2) The Senate amendment clarifies that distilled spirits held in a foreign trade zone on October 1, 1985, and entered into U.S. customs territory after that date are subject to the floor stocks tax.

Tentative agreement.--House recedes.

C. Debt Instruments (sec. 1503 of the House bill and sec. 1803 of the Senate amendment)

(1) Market discount

Tentative agreement.--Rules are provided for the treatment of market discount on debt instruments whose principal is paid in more than one installment, effective for debt instruments acquired after the date of enactment. An additional technical amendment is made.

D. Corporate (sec. 1504 of the House bill and sec. 1804 of the Senate amendment)

(4) The Senate amendment provides that the grandfather provision in the 1984 Act for the Alaska Native Claims Corporation is to apply without regard to the amount of equity in the subsidiary corporation.

Tentative agreement.--House recedes, with an additional technical amendment.

G. Tax Straddles (sec. 1508 of the House bill and sec. 1808 of the Senate amendment)

The provision in the House bill relating to the application of profit motive test to pre-1981 straddles is deleted in the Senate amendment.

Tentative agreement.--Senate recedes.

H. Depreciation

(1) Recapture

Tentative agreement.--The rules denying installment sales treatment to depreciation recapture apply to sales of partnership interests.

I. Foreign (sec. 1510 of the House bill and secs. 990 and 1810 of the Senate amendment)

(3) The Senate amendment provides that in applying the substantial presence test for purposes of determining the residency of an alien, days in which a professional athlete is present in the United States competing in certain charitable sports events are not counted.

Tentative agreement.--House recedes.

M. Luxury Vehicles and Gas Guzzler Tax (sec. 1512(e) of the House bill and sec. 1812(e) of the Senate amendment)

(1) Under the Senate amendment, the provision applying "unloaded gross vehicle weight" to luxury vehicles is not made applicable to trucks and vans.

Tentative agreement.--House recedes.

(2) Under the Senate amendment, the provision applying "unloaded gross vehicle weight" to the gas guzzler tax is made effective November 1, 1985 (instead of January 1, 1980, with a special rule for 1985 and 1986 station wagons).

Tentative agreement.--Senate recedes.

(3) Under the Senate amendment, the gas guzzler tax is made inapplicable to small manufacturers who lengthen existing automobiles.

Tentative agreement.--House recedes to Senate offer.

N. Federal Home Loan Bank

Tentative agreement.--Provides that dividends received deduction with respect to dividends paid by a Federal Home Loan Bank is to be determined by reference to its retained earnings for financial purposes.

II. Life Insurance (secs. 1521-1529 of the House bill and secs. 1821-1829 of the Senate amendment)

(10) The Senate amendment provides that transfers of annuities without adequate consideration are treated as causing the

excess of the investment in the contract over the cash surrender value to be treated as income.

Tentative agreement.--House recedes with technical changes.

(11) Tentative agreement.--The grandfather provision with respect to modified coinsurance is reaffirmed.

(12) Tentative agreement.--With respect to high surplus mutual provision, correct technical language of the provision to effectuate intent of both bills.

III. Simplification

A. Alimony

Tentative agreement.--Senate recedes to House offer to delete the requirement to state termination of payments in the decree and to reduce the six-year alimony rule to 3 years, as in 1984 House bill.

IV. Employee Benefits

A. Welfare Benefit Plan Provisions (sec. 1551 of the House bill and sec. 1851 of the Senate Amendment)

(2) Under the Senate amendment, the account limits do not apply in the case of a welfare benefit fund under a collective bargaining agreement.

Tentative agreement.--House recedes.

(5) Under the Senate amendment, the transition rule for accrued vacation pay applies in the case of a fully vested vacation pay plan under which the vacation pay is required to be (or is in fact) paid within 12 months following the close of the employer's taxable year.

Tentative agreement.--House recedes with an amendment to provide that the transition rule is available if the vaction pay is expected to be (or is in fact) paid within 12 months following the close of the employer's taxable year.

B. Pension Plan Provisions (sec. 1552 of the House bill and sec. 1852 of the Senate amendment)

(1) The provision in the House bill requiring that distributions commence under a tax-sheltered annuity no later than when the employee attains age 70 1/2 is deleted in the Senate amendment.

Tentative agreement.--Senate recedes.

(2) The repeal in the Act (and the reduction in TEFRA) of the estate tax exclusion for pension benefits is modified to provide that the provision does not apply to an individual who (a) separated from service before January 1, 1982, and (b) otherwise meets the requirements for the grandfather rule, and such an individual is treated as having made an irrevocable election of the time and form of benefits if the individual did not change an election before the individual's death.

Tentative agreement.--House recedes with an amendment to provide that the grandfather is also available for individuals who separated from service before January 1, 1982, and (b) irrevocably elected a form of benefits to be paid in the future.

(3) The effective date of the Multiemployer Pension Plan Amendments Act of 1980 is modified in the Senate amendment to provide that the effective date is (a) January 12, 1982, in the case of a certain employer, and (b) June 30, 1981, in the case of an employer engaged in the grocery wholesaling business.

Tentative agreement.--House recedes, with a modification and with an amendment changing the January 12, 1982, effective date to January 16, 1982.

C. Fringe Benefit Provisions

(1) The House bill clarifies in the legislative history that the application of the product testing provision for purposes of the working condition fringe benefit exclusion in the case of automobile testing is not violated if the employer charges the employee a reasonable amount for any personal use of the automobile as long as all of the other requirements are satisfied.

Tentative agreement.--Senate recedes.

(2) Under the legislative history of the House bill, the exception to the working condition fringe benefit rule for full-time automobile salesmen is clarified to provide that the exception is not limited to employees who have the formal job title of salesperson, but includes any employees who regularly perform the functions of a floor salesperson or sales manager.

Tentative agreement.--Senate recedes with a clarification that the exception applies to any employee who, during substantially all of a normal working day, performs the duties of a floor salesperson. The exception is not limited to employees who have the formal job title of salesperson.

(8) Under the legislative history of the Senate bill, the provision of public transit passes as a de minimis fringe benefit is clarified.

Tentative agreement.--Statement of Managers to include Senate bill clarification.

D. Employee Stock Ownership Plans (sec. 1554 of the House bill and sec. 1854 of the Senate amendment)

(1) For purposes of the provisions relating to the tax-free rollover of gain under section 1042 upon the sale of qualified securities to an ESOP--

(a) the Senate amendment clarifies that, in the case of the death of an individual who sold "qualified securities" to an ESOP or an eligible worker-owned cooperative ("EWOC"), the executor of the individual's estate is eligible to elect to defer the recognition of gain, if any, realized on the sale, to the extent that the proceeds are invested by the executor in qualified replacement property, and the other conditions of section 1042 are satisfied.

Tentative agreement.--House recedes.

(b) the Senate amendment provides that the 30-percent ownership test will be deemed satisfied if, immediately after the sale of the "qualified securities" to the ESOP or EWOC, the ESOP or EWOC holds (i) 30 percent of the total number of shares of each class of stock (other than preferred) or (ii) 30 percent of the total value of all stock of the corporation that issued the qualified securities.

Tentative agreement.--House recedes.

(c) the Senate amendment provides that the 30-percent ownership test is to be applied after application of the attribution rules of section 318(a)(4) with respect to sales after May 6, 1986.

Tentative agreement.--House recedes.

(d) the Senate amendment eliminates, as a condition of nonrecognition treatment, the requirement that no portion of the employer securities acquired in a section 1042 transaction be allocated for the benefit of the taxpayer, family members of the taxpayer or owners of more than 25 percent in value of any class of outstanding employer securities ("the prohibited allocation rule"); and makes this requirement a qualification requirement for ESOPs and EWOCs.

Tentative agreement.--House recedes.

(e) the Senate amendment modifies the prohibited allocation rule in the same manner as the House bill, except in the following respects:

(i) the Senate amendment clarifies that neither assets attributable to the employer securities, nor assets allocable in lieu of those securities, may inure for the benefit of the prohibited group.

Tentative agreement.--House recedes.

(ii) the Senate amendment clarifies that it is the taxpayer who elects nonrecognition treatment to whom the rule applies.

Tentative agreement.--House recedes.

(iii) the Senate amendment contains a de minimis exception to the rule prohibiting allocations to family members.

Tentative agreement.--House recedes.

(iv) the Senate amendment clarifies that an individual is a 25-percent shareholder for purposes of the rule if the individual owns (after attribution) more than 25 percent of (a) any class of outstanding stock of the corporation that issued the employer securities, or (b) the total value of any class of outstanding stock of the corporation. The bill also clarifies that attribution rules are applied without regard to an employee trust exception and the date as of which an individual's status as a 25-percent shareholder is to be determined.

Tentative agreement.--House recedes.

(v) the Senate amendment limits the prohibited allocation rule to a specified period of time after sale or allocation of the securities;

Tentative agreement.--House recedes.

(vi) the Senate amendment provides that the statute of limitations for the excise tax on a prohibited allocation (new section 4979A) shall not expire before the later of 3 years from the date of the first allocation of employer securities acquired in the section 1042 transaction, or the date that the Secretary is notified of the failure to comply with the exclusive benefit requirement.

Tentative agreement.--House recedes.

(vii) the provisions modifying the prohibited allocation rule are effective for sales of securities after the date of enactment.

Tentative agreement.--House recedes.

(f) the Senate amendment provides that qualified replacement property does not consist of securities issued by any member of the same controlled group of corporations as the corporation that issued the qualified securities.

Tentative agreement.--House recedes.

(g) the Senate amendment requires that, to be an operating corporation, more than 50 percent of a corporation's assets must be used in the active conduct of a trade or business during the replacement period and provides that a financial institution is treated as an operating corporation.

Tentative agreement.--House recedes.

(h) the Senate amendment provides that any qualified replacement property of the taxpayer with respect to which the section 1042 election was made is disregarded for purposes of determining whether one corporation is in control of another.

Tentative agreement.--House recedes.

(i) the Senate amendment provides that, if a taxpayer acquired a security before January 1, 1986 (rather than September 27, 1985, under the House bill), and treated such security as qualified replacement property, and if such property no longer constitutes qualified replacement property, then the replacement period for the acquisition of qualified replacement property is extended until January 1, 1987 (rather than September 27, 1986, under the House bill).

Tentative agreement.--House recedes.

(j) with respect to the provision that a subchapter C corporation may not elect section 1042 treatment, the Senate amendment contains exceptions for two sales.

Tentative agreement.--House recedes.

(k) the Senate amendment exempts any transfer of qualified replacement property (i) in any controlled, nontaxable reorganization, (ii) by reason of the death of the taxpayer who made the section 1042 election, (iii) by gift, or (iv) in any transaction with respect to which an election under section 1042 is made from the general

recapture provision.

Tentative agreement.--House recedes.

(2) For purposes of the provisions relating to the deductibility of dividends paid on stock held by an ESOP--

(a) the Senate amendment provides that dividends paid to a participant that are deductible under section 404(k) are treated as paid under a separate contract, with an exception for dividends paid before January 1, 1986, if the taxpayer treated such dividends in a manner inconsistent with the amendment on a tax return filed before the date of enactment.

Tentative agreement.--House recedes.

(b) the Senate amendment does not contain the provision that dividends must be paid on stock that has been allocated to a participant's account on the record date of the dividend in order to be deductible.

Tentative agreement.--House recedes.

(c) the Senate amendment provides that the Secretary may disallow a deduction under section 404(k) if the Secretary determines that such dividend is in substance an avoidance of taxation, whereas the House bill denies a deduction for dividends that are, in substance, the payment of unreasonable compensation.

Tentative agreement.--House recedes.

(d) the Senate amendment provides an exception to the rule that a deduction is allowed only in the taxable year of the corporation in which the dividend is paid or distributed to the participant for dividends paid before January 1, 1986, if the taxpayer treated the dividends in a manner inconsistent with the amendment on a tax return filed before the date of enactment.

Tentative agreement.--House recedes.

(3) For purposes of the provisions relating to the exclusion of interest on loans to an ESOP used to acquire employer securities--

(a) the Senate amendment contains an exception to the rules on corporate tax preference items for excludable interest received by a financial institution for a securities acquisition loan.

Tentative agreement.--House recedes.

(b) the Senate amendment contains an exception to the below-market loan rules for certain loans related to securities acquisition loans.

Tentative agreement.--House recedes.

(c) the Senate amendment provides that, notwithstanding the restrictions on loans between certain related parties, a loan will nevertheless be treated as a securities acquisition loan provided that (1) the loan did not originate with any prohibited lender, and (2) no interest received on such loan during such time as such loan is held by such employer (or any member of a controlled group of which the employer is a member) is excludable under section 133.

Tentative agreement.--House recedes.

(d) the Senate amendment provides that, if a corporation borrows funds which it in turn lends to an ESOP, the loan to the corporation will be eligible for the exclusion under section 133 only if the terms of the two loans are substantially similar, or if the payment terms are substantially similar, except for the fact that the loan to the ESOP provides for the more rapid payment of principal or interest if allocation under the plan attributable to such repayment does not discriminate in favor of highly compensated employees and the original commitment period of the loan to the corporation does not exceed 7 years.

Tentative agreement.--House recedes.

(4) The Senate amendment requires the trustee of an ESOP or EWOC, the by-laws of which provide that the interests in the ESOP or EWOC are governed on a one-vote-per-participant basis, to vote the employer securities in a manner that reflects the one-man-one-vote philosophy.

Tentative agreement.--House recedes.

(5) The Senate amendment provides that, if a plan fiduciary exchanges employer securities for other securities of the employer pursuant to a tender offer, or exchanges the securities for cash and reinvests the cash in new employer securities within 90 days, the plan will have a carryover basis in the acquired securities.

Tentative agreement.--House recedes.

(6) The Senate amendment also provides that a plan may distribute employer securities in lieu of cash, subject to the requirement that such securities are resold to the

employer.

Tentative agreement.--House recedes.

V. Tax-Exempt Bonds (secs. 1561-1574 of the House bill and secs. 1861-1873 of the Senate amendment)

(8) The Senate amendment extends the termination date for exempting tax-increment bonds from the private loan bond rule from December 31, 1985, to the date of enactment.

Tentative agreement.--The provision applies to bonds issued before August 16, 1986.

VI. Miscellaneous

B. Foreign Sales Corporations (sec. 1576 of the House bill and sec. 1876 of the Senate amendment)

A transition rule for certain contracts and leases in the House bill is deleted in the Senate amendment.

Tentative agreement.--Senate recedes.

C. Partnership Audit

Tentative agreement.--The prohibition against a second notice of deficiency is waived for certain partnership audit proceedings.

TECHNICAL CORRECTIONS TO THE RETIREMENT EQUITY ACT OF 1984 (Section 1897 of the Senate Amendment)

The Senate amendment is the same as H.R. 2110, as reported by the Ways and Means Committee, except--

(1) the notice period during which the plan is required to provide a participant with a written explanation of the qualified preretirement survivor annuity includes a reasonable period after separation from service in the case of a participant who separates before age 35.

Tentative agreement.--House recedes.

(2) the amendment provides that the annuity starting date in the case of a benefit which is not payable as an annuity is the date on which such benefit is paid or commences being paid (the House bill provides that, in such cases, the annuity starting date is the date such benefit is to be paid).

Tentative agreement.--House recedes with an amendment to provide that the annuity starting date (1) in the case of benefits payable as a joint and surviving annuity, is the

first day for which an amount is received as an annuity, and (2) in all other cases, is the date all events have occurred which entitle the participant to the benefit.

(3) the amendment clarifies that a plan that is exempt from the survivor benefit requirements is not required to provide for payment of the participant's nonforfeitable accrued benefit, upon the death of the participant, to the participant's surviving spouse unless the participant and the spouse were married for at least one year on the date of the participant's death.

Tentative agreement.--House recedes.

(4) the definition of earliest retirement age for purposes of the qualified domestic relations order provisions is modified to mean (i) the date that is 10 years before the normal retirement age or (ii) in the case of a plan from which amounts may be withdrawn before separation from service, the date that amounts may be withdrawn.

Tentative agreement.--House recedes, with an amendment to provide that the earliest retirement age is the later of age 50 or the earliest date benefits are payable under the plan.

(5) the rules relating to cash outs of accrued benefits are applicable only to vested, accrued benefits.

Tentative agreement.--House recedes.

(6) the rules relating to cash outs of accrued benefits do not apply to deductible dividend distributions from an employee stock ownership plan (ESOP) to participants or beneficiaries.

Tentative agreement.--House recedes.

(7) the rules relating to cutbacks in accrued benefits are not treated as violated merely because an ESOP is amended to modify distribution options in a nondiscriminatory manner;

Tentative agreement.--House recedes.

(8) the deferred effective date of the Act for collectively bargained plans is extended from January 1, 1987, to July 1, 1988.

Tentative agreement.--House recedes.

(9) the amendment provides that any waiver of a survivor benefit is not treated as a transfer for purposes of the gift tax provisions.

Tentative agreement.--House recedes.

(10) with respect to the transition rule for participants who died between the date of enactment and the effective date, the plan is treated as satisfying the transition rule if the plan paid the survivor benefit to the surviving spouse in a form other than a survivor annuity.

Tentative agreement.--House recedes.

(11) the amendment does not contain the amendment to ERISA to permit owner-employees to borrow from a qualified plan.

Tentative agreement.--Senate recedes.

(12) Tentative agreement.--Amend the first sentence of section 411(a) by striking "paragraphs (1) and (2) of this subsection" and inserting in lieu thereof "paragraphs (1), (2) and (11) of this subsection" and amend section 411(a)(11)(A) by striking "such benefit shall not be treated as nonforfeitable" and inserting in lieu thereof "the requirements of this subsection are not satisfied". Conforming amendments to be made to Title I of ERISA.

(13) Tentative agreement.--The provision changing the minimum age participation rule with respect to simplified employee pensions is applicable for years beginning after the date of enactment.

(14) Tentative agreement.--The requirement that the participant's spouse must consent to a change in benefit form is applicable for years beginning after the date of enactment.

(15) Tentative agreement.--The provision taxing participants on payments received by an alternate payee under a qualified domestic relations order is applicable for payments made after the date of enactment.

TECHNICAL CORRECTIONS TO AFDC AND CHILD SUPPORT PROGRAMS

I. Stepparent Work Disregard (sec. 1883(b)(1) of the Senate amendment)

Tentative agreement.--House recedes to the Senate amendment, which repeals the authority for a lower disregard in the case of part-time employment effective October 1, 1984.

II. Standard Filing Unit (sec. 1883(b)(2) of the Senate amendment)

Tentative agreement.--House recedes to the Senate amendment, which clarifies that the standard filing unit provision applies to the AFDC-UP program. The changes are effective October 1, 1984. The amendment also clarifies that Title II benefits and certain child support payments are also included in family income under the standard filing unit.

III. Definition of Minor Parent (sec. 1883(b)(3) of the Senate amendment)

Tentative agreement.--House recedes to the Senate amendment, which clarifies that the definition of minor parent is based only on age, not on school attendance, with an amendment clarifying that the provision applies to minor parents up to age 18. The amendment is effective October 1, 1984.

TECHNICAL CORRECTIONS TO THE CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT OF 1986 (COBRA)

Tentative agreement.--Include in H.R. 3838 technical amendments to the continuing health care provisions of COBRA contained in the House budget reconciliation bill, with appropriate conforming amendments to Title I of ERISA.

TECHNICAL CORRECTIONS TO TRADE AND TARIFF PROGRAMS

A. Customs User Fees

(1) Vessels and Barges

Tentative agreement.--(1) an annual cap of $5,955 would be imposed on vessels over 100 net tons; (2) a new fee of $100 with an annual cap of $1,500 would be created for barges and other bulk carriers; (3) clarify that when trucks, railroad cars or other conveyences are imported on a vessel or barge, the only fee applicable would be the fee on the vessel or barge; and (4) exclude tug boats from the application of the fee.

(2) Passenger Fees

Tentative agreement.--Clarify that passengers originating in the U.S. would not be subject to the fee and clarify the Senate provision regarding overtime charges for preclearance of passengers.

(3) Railroad Cars

Tentative agreement.--The fee would be changed to $7.50 for cars carrying merchandise and no fee would be assessed on empty cars.

(4) Customs Broker Fees

Tentative agreement.--Clarify that the applicable fee in calendar year 1986 would be one-half of the annual fee and provide that failure to pay on time will not result in punitive action except upon reasonable notice after giving reasonable opportunity to cure default. Clarify existing provisions with respect to the compensation of customs brokers for their freight forwarding activities.

B. Foreign Trade Zone

Tentative agreement.--Clarify fifth provision in Foreign Trade Zones Act to allow domestic denatured alcohol to be used in the manufacture of other articles.

C. Marking of Pipes, Tubes, and Fittings

Tentative agreement.--Clarify that marking exception for small diameter pipes and tubes also applies to small diameter fittings.